

SPECIAL INVESTIGATION

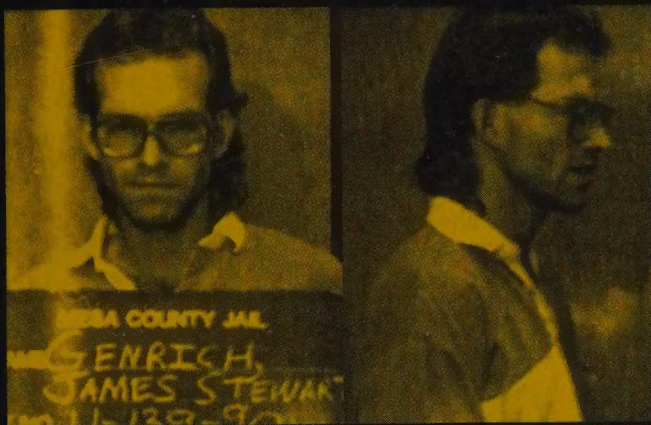
THE Nation.

CROSS

POLICE LINE DO NOT CR

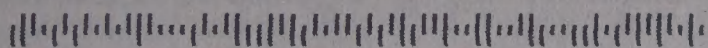
FORENSIC SCIENCE HAS PUT THOUSANDS OF PEOPLE IN PRISON

(Jimmy Genrich is one of them)



WHAT IF IT ISN'T SCIENCE AT ALL?

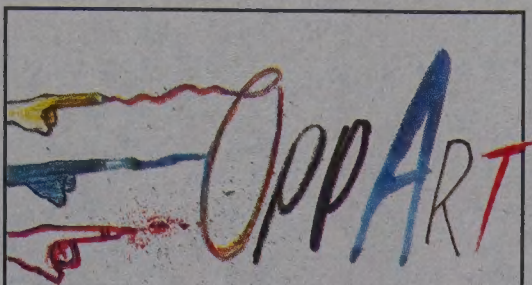
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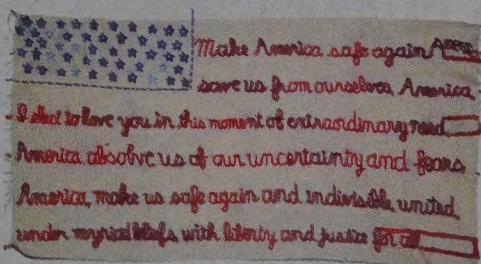
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*Artistic
Dispatches From
the Front Lines
of Resistance*

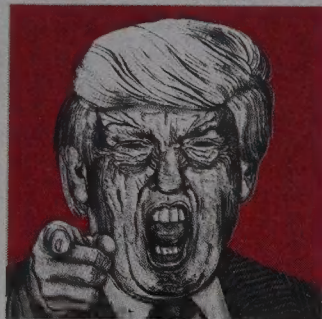


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BULLY



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Letters

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A Rose Is a Rose Is a Rose?

The exciting rise of Democratic Socialists portends good for America ["Coming Up Roses," Jan. 15/22], but let them, please, find welcome in the Democratic Party, which needs them so badly. This Democrat voted for Bernie Sanders and, of course, against Donald Trump. The past year has been agony.

Republican majorities in Congress supported the United States' withdrawal from the Paris climate agreement to protect life on earth, and voted for the terrible tax bill that every single Democratic representative opposed. Now the GOP must pay: This November, let progressive voters of every stripe unite in defeating Republicans, coast to coast, at national, state, and local levels. It's our best hope to minimize further damage by the Trumpists.

We would have defeated George W. Bush in 2000 and avoided the Iraq War if Green voters had remained "Green Democrats" instead of pouring themselves into a different party. Unity now between Democratic Socialists, Our Revolution, and progressive and liberal Democrats can move the party where it needs to go—and win some elections. **NATHANIEL BATCHELDER**
OKLAHOMA CITY

Lawyers, Yes, but Christian?

I'll begin by being a little nitpicky: The title of the Jan. 1/8 cover article, "An Army of Christian Lawyers," should have concluded with a question mark—as in, "An Army of Christian Lawyers?"—because what these lawyers are doing is anything but Christian. Otherwise, I want to thank Sarah Posner and *The Nation* for publishing this excellent report exposing the influence and power of the Alliance Defending Freedom. Its hatred toward the LGBTQ community and women's reproductive issues, and its

ever-increasing power and influence over the judiciary under the Trump administration, are truly frightening and pose a serious threat to our country.

THE REV. DR. DOYLE A. LUCKENBAUGH
MASSILLON, OHIO

Re "An Army of Christian Lawyers": I find it remarkable that North American society consistently manages to yield an excess of lawyers, many of whom seem content to pursue relatively frivolous and even scurrilous cases. If our civilization finally collapses, it won't be due to the supposed evils of same-sex marriage, liberalized abortion laws, and—for heaven's sake!—smoking pot. It will be for the reasons that have always destroyed civilizations: ignorance, stupidity, and greed.

RICHARD GRIFFITH
RAVENNA, ONTARIO

Dishonorable Mention

I am extremely disappointed in your selections of Elizabeth Warren and Sherrod Brown for the "Progressive Honor Roll 2017" [Jan. 15/22]. Granted, each of them has some progressive tendencies, but they both supported Hillary Clinton. Had Warren come out for Bernie Sanders, he very likely would have won the Democratic primary. But she didn't stand up for a true progressive, and neither did Sherrod Brown.

BOB BOGNER

I agree with the selection of most of the persons and organizations featured in John Nichols's "Progressive Honor Roll 2017." However, I suggest that Representative Adam Schiff be added to the list for his extremely articulate and objective explanation of the investigation of Trump's 2016 campaign and Trump's staff's ties to Russia.

EDWARD L. KOVEN
HIGHLAND PARK, ILL.

letters@thenation.com

A Racist Ransom Note

Backed by hate groups, endorsed by the unions that represent Immigration and Customs Enforcement agents and Border Patrol agents, and counseled by architects of the country's most xenophobic state-level policies, Donald Trump made it clear early in his candidacy where he stood on

immigration. And yet in January, when the White House released a one-page summary of its opening bid for an immigration deal, the details were stunning.

The plan was pitched as a way to sort out the fates of the roughly 700,000 young undocumented immigrants who will lose their protections under the Deferred Action for Childhood Arrivals program. Already, an estimated 122 young people lose their status every day, and some 17,000 have lost their DACA protections since Trump canceled the program last September. And Trump's plan would help them, granting as many as 1.8 million young Dreamers, as DACA recipients are often called, an opportunity to get on a decade-long path to citizenship.

But the proposal would also slash legal immigration nearly in half by gutting the family-reunification process, which is the top driver of legal immigration and the primary avenue through which Latin American, Asian, and Middle Eastern immigrants have been able to come to the United States since the 1960s.

The plan would also eliminate the visa lottery, a game of chance that provides 50,000 visas annually to people from countries that aren't as well represented through the other immigration channels. Because of how the immigration system is designed—you otherwise need to be very well educated or the close family member of a US citizen or green-card holder—the visa lottery has enabled people from African and Middle Eastern countries to immigrate.

It would strip due-process rights from undocumented people who've overstayed their visas if they are ever apprehended by immigration authorities. Most people in the United States who are undocumented become so by overstaying their visas. Under the plan, if ICE catches them, these people would have no right to a hearing before a judge and could be summarily deported.

These are not small things. These policy directives attack bedrock principles of the immigration system that stretch back not just 50 years, to the last rewrite of the immigration system, but to the very start of immigration policy-making in this country.

Dreamers, who stand to benefit, have slammed the plan. "Let's call this proposal for what it is: a white-supremacist ransom note," Greisa Martinez

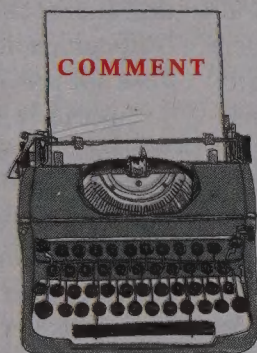
Rosas, advocacy director with the national immigrant-youth network United We Dream, said in a statement. "They have taken immigrant youth hostage, pitting us against our own parents, Black immigrants and our communities in exchange for our dignity."

Trump's proposal is less concerned with addressing DACA and any of the other actual problems that exist in the immigration system than it is with engineering a less brown demographic future.

With the guidance of Stephen Miller, Steve Bannon, Jeff Sessions, and Kris Kobach, Trump has assembled the nation's most rabid anti-immigrant politicians to translate fear of immigrants into policy and attempt to turn back the tide of demographic shifts that the last major rewrite of the immigration code ushered in.

Unfortunately for Trump, the demographic changes under way in the country may be slowed but not stopped. As it is, every month some 66,000 Latinos in the United States turn 18, and Asians are the fastest-growing segment of the US population. Immigration may slow. Many more people may be locked up or kicked out of the country. But people of color are not going to disappear, no matter how fast Trump attempts to deport them. These shifts are much bigger than even the White House's attempts to quash them.

JULIANNE HING



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DC BY THE NUMBERS



16

Number of bills introduced so far in 2018 that would restrict voting rights; the measures have been introduced in eight states

144

Number of bills introduced this year that would expand voting access; the measures have been introduced in 22 states

1.5M

Number of people who will be newly eligible to vote in Florida if voters overturn the state's felon-disenfranchisement law in November

16M

Number of Americans who experienced at least one problem voting in 2016, or about 12 percent of all voters

36.7%

Share of voting-eligible US citizens who voted in the midterm elections in 2014, the lowest percentage since 1942

—Sophie Kasakove

Trump's Forever Wars

A new Pentagon blueprint to take on everyone.

Did the Pentagon just officially declare a new Cold War with both China and Russia while also pledging to wage endless battles around the globe? That was the central message of the Trump administration's newly released National Defense Strategy, which, as Andrew Bacevich noted in *The American Conservative*, offers no strategy and isn't about defense. Rather, it's an aggressive attempt to justify a massive and costly military buildup.

"We are facing," the NDS declared, "increased global disorder...creating a security environment more complex and volatile than any we have experienced in recent memory." That may sound sensible, but the Pentagon isn't talking about catastrophic climate change, debilitating inequality, or the destabilizing flows and misery of millions of displaced refugees.

No, the NDS is focused on the ostensible threat of Cold War adversaries. As Defense Secretary Jim Mattis put it in presenting the document, "[W]e will continue to prosecute the campaign against terrorists that we are engaged in today, but Great Power competition, not terrorism, is now the primary focus of U.S. national security."

China and Russia are described as "revisionist powers" that pose a genuine threat to the world: "[They] want to shape a world consistent with their authoritarian model—gaining veto authority over other nations' economic, diplomatic, and security decisions," the NDS said.

COMMENT

Russia, a decrepit and aging petro state, isn't the threat being described here, and its truculence is in no small part a reaction to the United States' relentless push to extend NATO to Russian borders despite pledges not to do so. China, by contrast, is a global economic power, offering a model of authoritarian, mercantilist state capitalism. Global corporations and our trade policies fueled its rise, helping it become the world's manufacturing center. Its influence will inevitably expand; it has the money.

As if tackling two superpowers weren't enough, the Defense Department also plans to counter rogue regimes, "defeat terrorist threats to the United States, and consolidate our gains in Iraq and Afghanistan while moving to a more resource-sustainable approach." The military will also sustain "favorable regional balances of power in the Indo-Pacific, Europe, the Middle East, and the Western Hemisphere" and "address significant terrorist threats in Africa."

Oddly, in his State of the Union address, Trump decided not to alert Americans to this new posture. He didn't bother to explain why he has abandoned his campaign promises to oppose "stupid" wars and to seek better relations with Russia.

Trump merely dusted off his hawkish bromides. Once

more he scorned "artificial timelines" in Afghanistan and the "terrible Iran nuclear deal," promised to keep Guantanamo, boasted about new sanctions on Cuba and Venezuela, and postured tough on North Korea.

Only hours before the speech, news broke that Victor Cha, Trump's pick for ambassador to South Korea, would no longer be nominated for the job. Almost simultaneously, Cha published an op-ed in *The Washington Post* outlining why a preemptive "bloody nose" strike on North Korea would be incredibly dangerous. Widespread alarm about the Trump administration's intentions followed, and was not quelled by lengthy sections of Trump's speech that spent a surprising amount of time depicting North Korea as an unacceptable danger. Trump declared that "complacency and concessions only invite aggression and provocation."

"Rivals like China and Russia" were mentioned only once and in passing. He called on Congress to "fully fund" the military and "rebuild" our nuclear arsenal without explaining why spending more on the military than the next eight countries combined isn't enough.

The president promised a government accountable to the American people, but his administration appears to be gearing up for new confrontations from the South China Sea to the Russian borders without offering Americans a clue about the risks involved.

This is the imperial view of a global power committed to defending "order" across the globe, a mission beyond the reach and the capacity of even the wealthiest nation and its allies. The NDS acknowledged the need for "difficult choices," but that is exactly what the document does not provide.

Instead, it simply demands a military force that, in "normal day-to-day operations," can "deter aggression in three key regions—the Indo-Pacific, Europe, and Middle East; degrade terrorist and WMD threats; and defend U.S. interests from challenges below the level of armed conflict." With US Special Forces already chasing "terrorists" in countries across Africa, and the military tasked with policing space, air, and seas across the world, this is a recipe for permanent engagement.

The NDS also detailed the need to maintain the Pentagon's "technological advantage" in everything from "advanced computing, 'big data' analytics, artificial intelligence, autonomy, robotics, directed energy, hypersonics, and biotechnology." This will require changes to "industry culture, investment sources, and protection across the National Security Innovation Base." In other words, the Pentagon will drive America's industrial policy.

Needless to say, all this requires big bucks—a lot more than the Pentagon has been receiving. Failure to cough up the money, the NDS warned, will result in "decreasing U.S. global influence, eroding cohesion among allies and partners, and reduced access to markets," which will contribute to a "decline in our prosperity and standard of living."

Notably absent from the document is any reckoning
(continued on page 8)

We've spent trillions killing uncounted thousands of people.

Q&A RESIDENTE

Residente—the former front man of Calle 13, the irreverent Puerto Rican hip-hop duo—has never shied away from politics. He has launched attacks on everything

from exploitation in the music industry to colonialism in Puerto Rico. Despite his embrace of controversy, Residente—born René Pérez Joglar—has enjoyed unrivaled success, winning a record 22 Latin Grammys with Calle 13 while raking in hundreds of millions of views on YouTube. Joglar's debut solo project, the self-titled global-music LP *Residente*, won Best Urban Music Album and was nominated for Album of the Year at the 2017 Latin Grammy Awards. I spoke to Joglar about colonialism, Bernie Sanders, and the aftermath of Hurricane Maria. This interview has been edited, condensed, and translated from Spanish. —Miguel Salazar

MS: I want to talk to you about Puerto Rico's colonial status. You've always been vocal in your rejection of the austerity measures imposed on the island. But what would you do as governor?

R: The first thing I'd do as governor would be to restore the island's sense of pride. The United States has no respect for our country, and that has to be fixed. I can't sit down to try to negotiate without any confidence or bargaining power. If you don't have that, how the hell are you going to negotiate?

So how can that be recovered? For starters, by not paying the debt. Not because of bad will but, rather, because

you have to take a detailed account of all the tangible and intangible costs. In this case, the intangibles are all of the destruction that the United States has subjected the island to. You can place a value on all these intangibles, until finally you come to the end and you say: "Well, this is what we owe you? I think it is *you* who owe *us*—for the ecological harm you've done, for the bombing of [David] Sanes in Vieques, for all of the assassinations, for the Ponce massacre." You can name and tally up every assassination committed by the US government, the CIA, et cetera, to this day. And when they say, "Pay up," you hand them that invoice.

MS: What is your relationship with Bernie Sanders like? Would you endorse him if he were to run again for president in 2020?

R: I would endorse him if he ran again, because he's the candidate who has demonstrated a much more convincing interest in Puerto Rico than anyone else. He took the time to see us in his office for Oscar López [a Puerto Rican nationalist whose prison sentence was eventually commuted by President Barack Obama at the end of his administration]. No one, not any senator or any candidate, would take those 20 minutes, but he

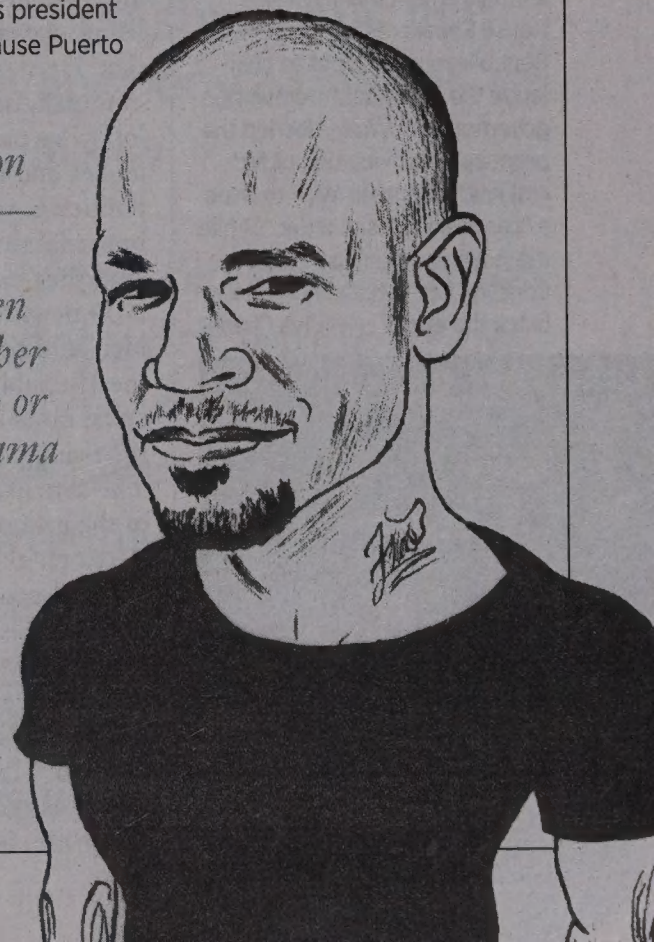
did. Hillary didn't even advocate for [Oscar López]. Every time I've seen him, he has shown himself to be a person conscious of what is happening in Latin America, in Puerto Rico, and in the world.

MS: It'll likely take years for Puerto Rico to recover from Hurricane Maria. You've been back to the island recently, and have been critical of the federal government's response to the disaster. How has the Trump administration failed Puerto Rico?

R: I think that what's going on in Puerto Rico—the failure—would have been the same whether we had Trump or Hillary or Obama as president. All of them would have failed equally, because no US president in history has really cared about our situation. The fact that Trump is president now has helped, because Puerto

Rico has become a charity case after the rude and insensitive way he treated us: throwing paper towels at people, making stupid comments about Puerto Rico, picking a fight with our mayor. All of that has served as a megaphone so that what's been happening here is heard around the world. I think that if Hillary were president, since she's politically correct, she would've come to Puerto Rico, she would've snapped a photo with people, would have met with a few people, but in the end would have done the same. Let's not forget that Obama visited once for four hours, left with a million dollars, and never came back or said anything. So I don't think that the Trump administration would have been the only one to fail. The United States is just not interested in Puerto Rico. ■

What's going on in Puerto Rico—the failure—would have been the same whether we had Trump or Hillary or Obama as president.



HARM REDUCTION

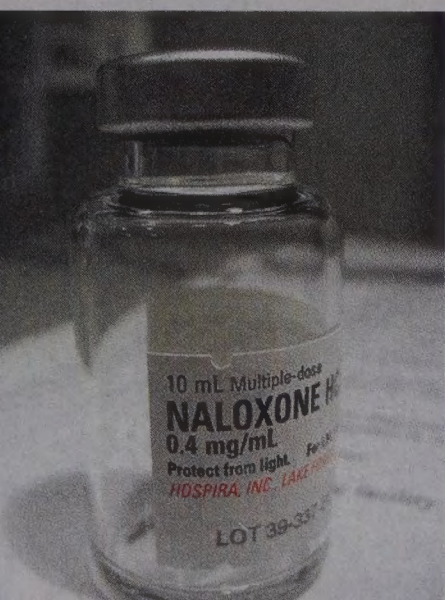
Moving the Needle

On January 23, Philadelphia city officials approved the creation of what they're calling Comprehensive User Engagement Sites, or CUES, which will be the first government-sanctioned safe-injection sites in the United States. Just one location is expected to save 25 to 75 lives a year, as well as millions in taxpayer dollars.

It's a much-needed intervention. The effects of the country's opioid epidemic have been harsh in the City of Brotherly Love, where officials estimate drug-overdose deaths topped 1,200 last year, one-third more than in 2016.

"We don't want [people] dying on the street, and we want to have a place to administer Narcan if necessary," Mayor Jim Kenney said, referring to the overdose-reversal drug. "We also want an opportunity to speak to people about their future and getting their lives straight." The city has stated that it will seek private organizations to run the sites at locations that have yet to be determined.

But the plan isn't without controversy. Shortly after the announcement, Pennsylvania House Speaker Mike Turzai—a Republican who hopes to challenge the incumbent Democratic governor, Tom Wolf—decided the proposal as a "violation of federal law," calling on Wolf to issue a "cease-and-desist order." While the governor expressed reservations, he has not attempted to block the effort. —Safiya Charles



Eric Alterman



The News Is Breaking

And a large segment of the US population doesn't care.

Buried inside a *New York Times* report on additional corporate tax cuts being quietly bestowed by Congress is a quotation from Martin Gaynor, a health economist at Carnegie Mellon University. Addressing the question of why the so-called "Cadillac tax" on expensive health-care plans had been delayed yet again, he mused: "I don't know if, as economists, we've just fallen down and not done a particularly good job explaining this to policymakers and the general public or whether this is just very hard."

An academic economist can be forgiven for believing that this Republican Congress might make a decision on the basis of sound policy. *The New York Times* cannot. Neither should the *Times* be excused for referring to the Heritage Foundation in another article as "a leading conservative think tank" in its coverage of a press release that bragged that "nearly two-thirds of [the foundation's] ideas had been carried out or embraced by the White House over the past year." The real story here is that the reason the Trump administration has adopted its ideas—if in fact it's true and the *Times* is not just being played, again, by right-wing hucksters—is that Heritage long ago ceased to operate even minimally as a "think tank" and instead became a lobbying pass-through operation in which ideologues and the extremely wealthy could pressure politicians via "studies" that have no grounding in impartial research or analysis. Does the *Times* not read the *Times*? Because I recall learning from a 2014 news story that, though "Long known as an incubator for policy ideas and the embodiment of the [Republican] party establishment, it has become more of a political organization feeding off the rising populism of the Tea Party movement." The article continued, "In recent months, some of the group's most prominent scholars have left. Research that seemed to undermine Heritage's political goals has been squelched, former Heritage officials say. And more and more, the work of policy analysts is tailored for social media."

But never mind any of that. The problem is, as always, "bipartisan," according to a third recent story in the *Times*. "A group of Republicans in the House and the Senate are warning of a secret plot in the F.B.I. to overthrow the Trump

government. Democrats speak of corruption and creeping authoritarianism, unchecked by a Congress that has turned into an adjunct of the executive." Got that? One party is pursuing a comically insane "plot," based on a joke e-mail and the other one "speak[s]" of a genuine threat to our democracy from these same malevolent lunatics, and, therefore, the problem is "bipartisan." Just ask, as the *Times* did, Senator Ben Sasse (R-NE), who imagines that a fetus can be viable outside the womb after only 20 weeks of pregnancy, lies about Planned Parenthood, denies the reality of man-made climate change, and earns a zero percent score from the nonpartisan League of Conservation Voters. He also votes with Trump 90 percent of the time. But to the *Times*, he is a credible source to explain that "Both parties—Republicans and Democrats—are obsessed with political survival and incumbency."

The problem of intellectual integrity in our public life is now almost beyond repair. According to a recent Gallup/Knight Foundation survey, "most Americans believe it is now harder to be well-informed and to determine which news is accurate. They increasingly perceive the media as biased and struggle to identify objective news sources. They believe the media continue to have a critical role in our democracy but are not very positive about how the media are fulfilling that role." They are right, of course, but unfortunately most people don't demand more from the media, much less prove themselves willing to pay what it costs to improve the situation.

A significant section of our citizenry simply does not care whether the "news" it receives is accurate. According to Gallup/Knight, "Republicans who can name an accurate source overwhelmingly mention Fox News." These are people who want nothing more than to see their ignorant worldview confirmed by the obvious lies, fantasies, racist in-



Most people don't demand more from the media, much less prove themselves willing to pay what it costs to improve the situation.

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nuendo, and crazy conspiracy theories put forward by the network's Trump cheerleaders: Sean Hannity, Tucker Carlson, and Laura Ingraham, among others. The rest of us are at the mercy of an increasingly chaotic media landscape driven by social-media sources often created expressly for propaganda purposes.

Five scholars associated with Microsoft Research recently released a study of "Trends in Fake News Consumption During the 2016 US Presidential Election," based in part on Internet Explorer data. They found that "social media was the primary outlet for the circulation of fake news stories and that aggregate voting patterns were strongly correlated with the average daily fraction of users visiting websites serving fake news." This was true at both the federal and state levels. According to Twitter's own data, at least 50,000 automated accounts tied to Russia sent out more than 2 million

election-related tweets between September 1 and November 15, 2016. And these were only the ones that Twitter could identify as Russian. Twitter says 12 percent of its accounts cannot be traced at all, while a study conducted by researchers at Indiana University and the University of Southern California puts that percentage at up to 15 percent—or as many as 48 million accounts. Meanwhile, Facebook, which may have as many as 60 million automated accounts, announced that it would downgrade posts that come from genuine news sources in order to focus more on friends and family. The company's more than 2 billion active users can now look forward to less reliable news and to providing less traffic, and therefore less income, to the struggling media institutions that try to deliver it. They can also, as a direct result of all these trends, look forward to more presidents and politicians like Donald Trump. ■

(continued from page 4)

with the failure of our current course. The "prosperity and standard of living" for most Americans has already been declining, to the point that life expectancy itself is now declining. Climate calamities are a real, present, and rising danger.

Our war of choice in Iraq blew the lid off the Middle East. Afghanistan, our longest war, is in its 17th year, with no end—and no purpose—in sight. American troops, as Bacevich noted, have fought in more places over the course of this century than any country in history.

We've spent trillions of dollars killing uncounted thousands of people; rained

bombs from drones on people in increasing numbers of countries; overthrown governments in Afghanistan, Iraq, and Libya; and dispatched Special Operations Forces to nearly three-fourths of the countries in the world. The NDS isn't wrong that we face a dangerous world, but there is no acknowledgment that we have helped create it.

A true reckoning is long overdue. Trump campaigned as someone who would end our "stupid" wars, change our "failed" trade policies, and champion better relations with Russia. Those promises have evaporated even faster than his populist economic postures.

What we are left with is truly dangerous to our security. The military will be tasked with missions it cannot fulfill. It will get more money, but not nearly enough. Real security threats will continue to be ignored. Billions will be wasted on baroque weaponry, while vital domestic investments are starved. The nuclear arms race will be revived. American lives will be lost in wars that continue endlessly, with the United States unwilling to lose and unable to win. We will spend more and more on the Pentagon and find ourselves growing less and less secure. We desperately need a real security strategy, and a revolt against endless war to give it traction. ROBERT L. BOROSAGE

SNAPSHOT / MOHAMMED SALEM



On Empty

A Palestinian boy in Gaza City holds cooking pots during a January 24 protest against the US decision to cut aid to the United Nations Relief and Works Agency.

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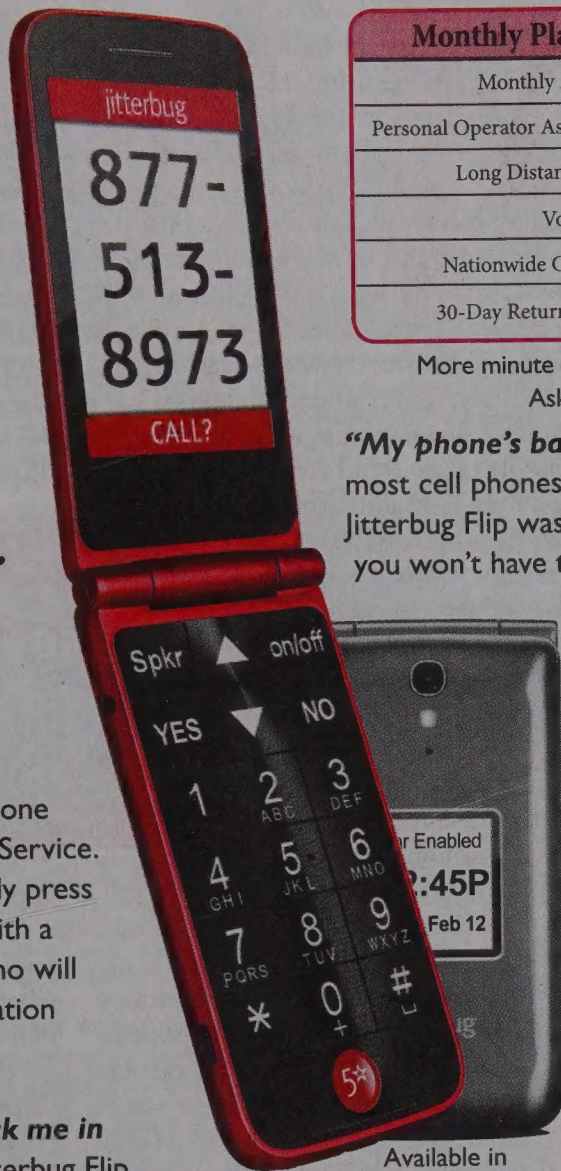
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EDUCATION

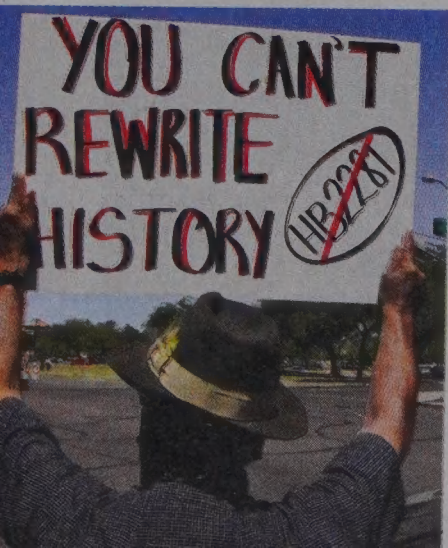
Raising Arizona

The Tucson Unified School District announced in January that it would discuss re-offering a Mexican-American studies program that had once been a much-loved part of its curriculum. In 2010, Arizona's GOP-controlled legislature outlawed the program, with Republican representatives claiming it was "radicalizing students." Last summer, a US district court struck down the law, ruling that it was racially discriminatory and violated the students' First Amendment rights. TUSD's decision to reconsider ethnic studies follows the examples set by California, which passed legislation requiring that an ethnic-studies curriculum be in high schools by 2020, and Oregon, which last June became the first state to mandate K-12 ethnic-studies lessons.

It's no coincidence that the renewed push for these classes is happening now. Ravi Perry, president of the National Association for Ethnic Studies, told NPR that ethnic studies "gained momentum, frankly, with the election of Donald Trump."

TUSD's announcement arrives as ICE agents are cracking down on immigrants of color in Arizona, where about one-third of the population is Hispanic and nearly 10 percent of the workforce is undocumented. Ethnic studies is an overdue effort to connect students to their surrounding heritages. In Perry's own words, "This is not about promoting an individual agenda. It's about understanding the importance of community solidarity."

—Madeleine Han



Patricia J. Williams



Shooting Students

What lesson should we learn from a school that instructs teachers on how to kill?

Within the first 23 days of 2018, there were 11 school shootings in the United States. In lieu of any serious discussion about gun control, there has been instead a proliferation of laws and bills that would arm teachers, and train them to be able to kill. Observes Adam Skaggs, of the Giffords Law Center to Prevent Gun Violence, "it's the idea that people need guns everywhere—city streets, public parks, even government buildings." It's also the response of a nation at war with itself.

One example of the trend is the Buckeye Firearms Foundation's funding of so-called "Faster" programs, three-day training sessions for teachers from around the country. In addition to target practice, one day of the training is devoted to "mindset development," or bolstering teachers' preparedness to shoot after split-second assessments. Trainees are asked "to close their eyes and imagine the student entering the classroom with a gun" and then are taught how to command the grit necessary to kill that student. One teacher from Colorado told the BBC that "she decided to picture her favourite student during the preparation exercises, in an effort to harden herself to the worst possible eventuality." A Faster instructor was quite encouraging of such resolve: "if we can have them win in their minds first, against that student, then when it comes to the actual incident they will prevail."

What an astounding proposition, this tragic lesson about winning "in their minds first, against that student...." This adherence to a toxic shoot-'em-up Wild West ethic puts teachers in a clear bind: They must labor from the untenable position of actively imagining their students in the crosshairs, the objects of target practice. If this isn't the end of civilization, I don't know what is.

Deputizing teachers as locked-and-loaded "peace" officers speaks volumes about how challenged police are by the quotidian nature of gun violence. It should make us ponder how much democratic assumptions about the state having a monopoly on violence have been frayed by anarchic ideologies of "every man for himself." And it brings that us-versus-them mentality into the classroom. The Colorado teacher imagined her favorite student; I'm guessing that many would imagine

their worst student, or some stereotype of dangerous otherness. Either way, the imaginative act of seeing the best as worst and the worst as expendable is a separate danger in itself—a premeditated license to shoot faster, ever faster...

In the United States, more than half the population believes that having a gun enhances the chances of survival in a world overrun by gangs of terrorists. But data shows very conclusively that gun ownership is much more likely to increase the risk of harm. According to decades' worth of research, according to the Brady Campaign to Prevent Gun Violence, "a gun in the home was

far more likely to be used to threaten a family member or intimate partner than to be used in self-defense." Not only is "[t]he risk of homicide...three times higher in homes with firearms," but in addition, "[k]eeping a firearm in the home increases the risk of suicide by a factor of 3 to 5 and increases the risk of suicide with a firearm by a factor of 17." There is no reason to suppose that such figures wouldn't

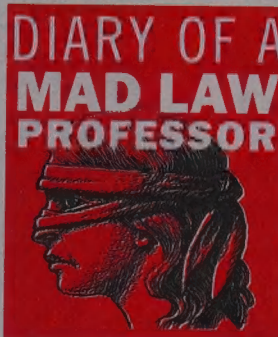
apply to gun-centered classrooms.

I can't comprehend this foolish disregard of empirical data about what actually reduces gun violence.

When the nuclear-warning system accidentally went off in Hawaii a few weeks ago, many experienced the profound helplessness of confronting an unfathomable force of violence. Perhaps it lends a certain sense of control to imagine that we'd

have time to "protect" ourselves by crawling into an air-raid shelter, but in case of nuclear attack, it is clear that anyone within broad range would be incinerated instantly. The only real hope for survival is limiting access to and control of the weapons themselves.

The same holds true for the extraordinary arsenal Americans own privately. We can do our best to protect ourselves against every unexpected irrational attack like the one in Las Vegas, but

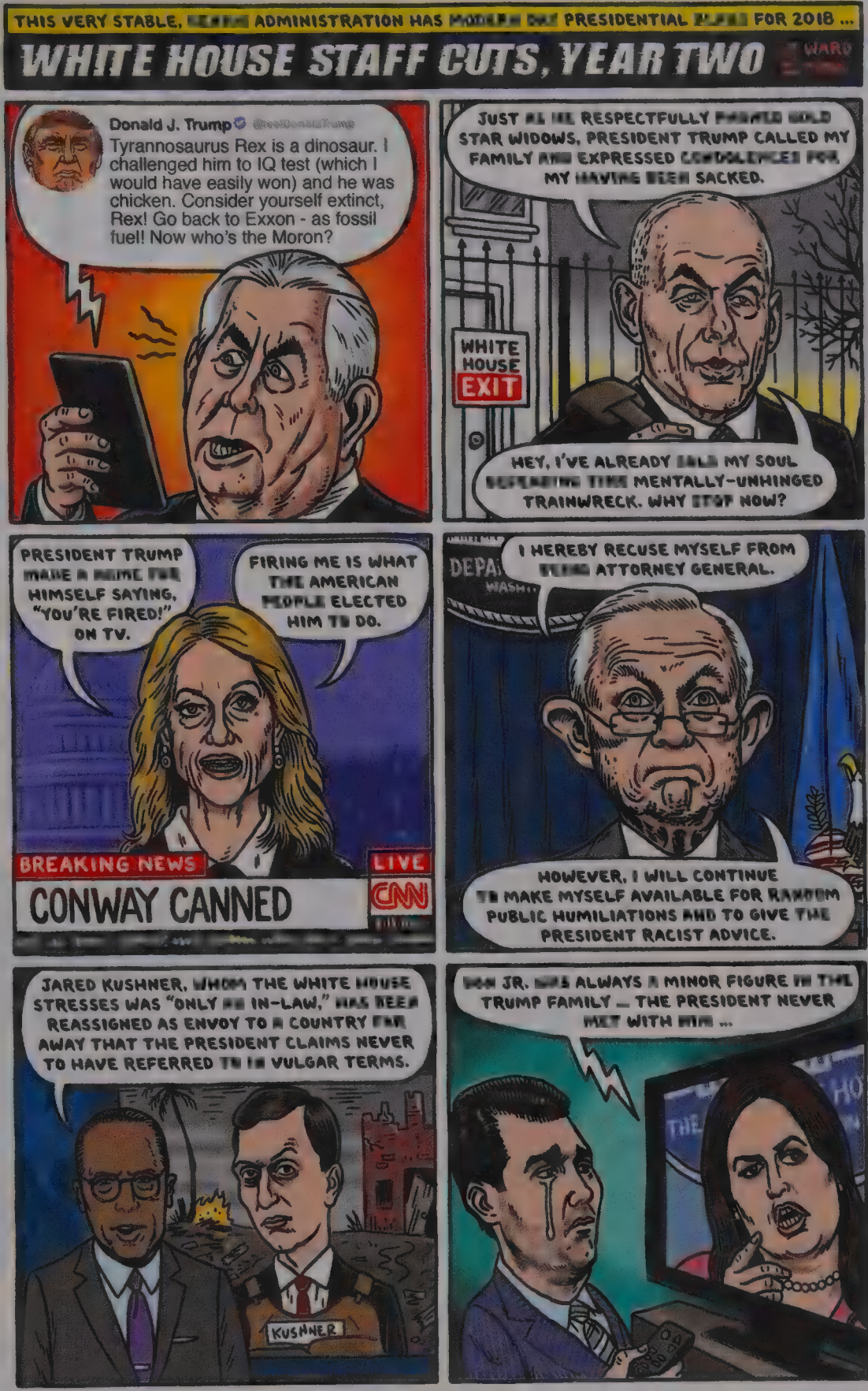


Trainees are asked to "imagine the student entering the classroom with a gun" and then are taught how to kill that student.

unless we wrap our bodies perpetually in Kevlar and travel in bomb-resistant tanks, the problem remains: There are simply too many guns in circulation for us ever to imagine that we might protect ourselves without simply reducing the number of them. In America, guns exact a toll greater than that of active warfare. According to *The Guardian*: “Since 1968...there have been 1,516,863 gun-related deaths on US territory. Since the founding of the United States, there have been 1,396,733 war deaths. That figure includes American lives lost in the revolutionary war, the Mexican war, the civil war (Union and Confederate, estimate), the Spanish-American war, the first world war, the second world war, the Korean war, the Vietnam war, the Gulf war, the Afghanistan war, the Iraq war, as well as other conflicts, including in Lebanon, Grenada, Panama, Somalia and Haiti.”

And yet... Faster’s training does map rather neatly onto America’s romance with redemptive vigilantism. Previously in this column, I recommended Harvard scholar Caroline Light’s excellent book *Stand Your Ground: A History of America’s Love Affair With Lethal Self-Defense*. Let me add to that recommendation Jean-Paul Sartre’s short story “Erostratus.” There, the narrator derives misanthropic and sexual pleasure from carrying a gun hidden in his pocket. That exhilaration comes, he says, not from the gun, but rather “it was from myself: I was a being like a revolver, a torpedo, or a bomb.”

Philosopher Robert Esposito writes that “things constitute the filter through which humans... enter into relationship with each other.” Guns, torpedoes, and bombs are precisely such things. Warns Esposito: “The more our technological objects, with the know-how that has made them serviceable, embody a sort of subjective life, the less we can squash them into an exclusively servile function.” ■



Calvin Trillin
Deadline Poet

THE DAWN OF AN AFFAIR WITH STORMY DANIELS

Though rusty at consensual sex,
He thought it might be worth a try
If he could think of how to start—
Which part of her to grab her by.

SPECIAL INVESTIGATION

THE CRISIS OF AMERICAN FORENSICS

MEEHAN CRIST / TIM REQUARTH

Jimmy Genrich, and thousands of others, have been imprisoned
for decades because of untested "science."



OSHA COUNTY JAIL
JIMMY GENRICH
JAMES STEWART
NO 11-139-90



Jimmy Genrich was
arrested for a series
of deadly pipe-bomb
explosions that
resulted in the
death of Grand
Juror Genrich.

POLICE LINED UP NOT CR

1 THE BOMBINGS

The first bomb didn't kill anyone. It was planted in the ground-floor parking lot beneath the Two Rivers Convention Center in downtown Grand Junction, Colorado—a dry, boom-and-bust mining town west of the Rockies where the snowcapped mountains give way to mesa and valley. In the morning the sun strikes gold on the sheer, striated walls of the sandstone cliffs that surround the Grand Valley, and in the evening the cliffs are ribboned with shifting periwinkle shadows. At 9 PM on Valentine's Day, 1991, Dennis Lamb was leaving a vocational banquet for School District 51, crossing the Two Rivers parking lot, when an explosion blasted shrapnel into the back of his right calf. "I thought I'd been shot," Lamb would recall.

Three weeks later, on the morning of March 5, four members of the Gonzales family piled into the family van, parked outside their home in a neighborhood two miles northeast of downtown, to go to the mall. Twelve-year-old Maria Dolores Gonzales had stayed home from school with a headache, and her mother let her come along. When the van rolled forward, a bomb that had been hidden in the left rear wheel well exploded. Shrapnel rocketed through the vehicle's carpeted floor and the plush back of Dolores's seat, entering her back and instantly severing her aorta. When she failed to respond to her family's panicked screams to get out of the van, they pulled her from the seat and blood pooled on the pavement. She died soon after.

Three months later, Suzann and Henry Ruble had just finished dinner and were leaving the Feed Lot, a downtown restaurant just blocks from the Two Rivers Convention Center. "What is that thing over there?" Suzann asked, pointing to an object she thought looked like the pneumatic tubes drive-up banks used to have. "It looks kind of strange, don't you think?" She drove over and Henry leaned out to pick it up. As he brought it up to his chest, Suzann recalled, "There was a big loud explosion. It lifted the truck and Henry dropped." Ruble's arms were blown off and his body mangled. He died instantly. Debris from this third and most powerful bomb was collected across the block.

The next day, federal agents from the Bureau of Alcohol, Tobacco, and Firearms descended on the town of roughly 30,000 to assist local investigators with what appeared to be a serial bomber. No one had taken credit, and the victims seemed chosen at random. The police were stymied, people were scared, and the pressure to find a culprit mounted. "We certainly don't want to create hysteria or paranoia in the community," a police lieutenant told the Grand Junction *Daily Sentinel* after warning people to check around their cars for bombs. "But we do want people to be aware that there is a person or persons out there with no regard for human life."

Investigators drew up a list of about 30 suspects, many of whom were known to lo-

"We don't want to create hysteria but there is a person out there with no regard for human life."

—Grand Junction police lieutenant to the local newspaper

Media attention

reached such a pitch that the trial had to be held in a town on the other side of the Rockies. Below, the Grand Junction *Daily Sentinel*.

cal police to dabble in explosives—not an unusual hobby in a town of miners and ranchers. "People use dynamite. People work in the oil patch. People set bombs off for fun," said Ellen Miller, a former correspondent for *The Denver Post* who covered the story. "I mean, seriously. People knew what pipe bombs were." Then, in early July, police received a nervous call from a woman who worked at the Readmor bookstore on Main Street. A 28-year-old local man named Jimmy Genrich had asked them to order *The Anarchist Cookbook*, a manual that contains, among other things, instructions on how to make a pipe bomb. They refused to order the book and instead called the police, skyrocketing Genrich to the top of the list of suspects.

A covert detail was put on Genrich in mid-July, with two or more ATF agents following him around the clock. They sat in an unmarked car outside the boardinghouse where he lived alone on the top floor, sharing a bathroom with other residents, mostly single men; the house sat just over two blocks from the convention center. They followed him when he walked across the street, wending his way through a parking lot, down an alley, and into the back door of Suehiro's, the Japanese restaurant on Main Street where he worked as a part-time dishwasher. They followed him when he left Suehiro's at the end of his shift and walked to the Corral, a bar a few blocks away, where he drank hard and tried (and failed) to talk to girls. They followed him when he walked a few more blocks to the Cheers Lounge, where the girls danced for other men and wouldn't talk to him. They followed him when he staggered back to his boardinghouse, drunk and angry, and they sat outside in the dark, all night, wakeful in case he should decide to go on one of his long nighttime walks. During the daylight hours, they saw his mother, a church organist named Sheila Greenlee, deliver his meals in a cooler.

One morning in late July, local detective Bob Russell, a tall man with watchful blue eyes and military shoulders, showed up at the boardinghouse with two ATF agents. They wanted inside. Genrich cracked the door, got angry, and didn't want to let them in. (Later he said Russell illegally put a foot in the door and wouldn't



High of Lamb

Daily Sentinel

Grand Junction, Colorado Vol. 93, No. 92

Karen's ready for company Page 19

25¢ newsstand — 28 pages

Arrest made in pipe bombings

Suspect facing 3 counts of 1st-degree murder



Genrich connection with three pipe bombs

James Genrich was arrested Tuesday evening by police at his

apartment at 230 1/2 Ave. Grand Junction Police Chief David Olson could not be reached for comment this morning, but authorities scheduled a news conference for Thursday morning. Genrich was indicted by the Grand County grand jury on Monday on 10 counts. District Attorney Steve Erben declined to discuss details of the case against Genrich, including whether he might petition to seek the death penalty. But said he was glad to see an arrest finally made. "We're definitely satisfied with the way the investigation was handled," Erben said. "The first bombing occurred Feb.

14, 1991, at Two Rivers Convention Center, where Lamb was injured. The bomb was placed in the parking garage under the center. Shrapnel from the bomb struck Lamb in the leg, inflicting minor injuries. The second bomb went off on March 5 at 520 N. 3rd St. in the left rear wheel well on a van belonging to Jose Gonzales. Gonzales and several family members were on the way to Hill store when the bomb exploded. Maria Dolores Gonzales was the only person in the van struck by the shrapnel. A piece of the metal reportedly went

through her heart, killing her instantly. The third bomb, which investigators say was the most powerful of the three, went off June 6 at the Feed Lot Restaurant and Lounge, 100 Main St., killing Ruble. Ruble reported to see the bomb in the parking lot of the restaurant, and it killed a chest-high 11-year-old. The grand jury charged Genrich with three counts of first-degree murder, saying in the first count that he deliberately fashioned the bomb that killed Ruble knowing it would be more powerful than the one that killed Gonzales. The second first-degree murder

event in Ruble's death charges Genrich with murder "under circumstances evidencing an attitude of universal malice manifesting extreme indifference to the value of human life." According to an affidavit filed in Mesa County District Court, none of the evidence against Genrich was gathered during a search of his home on Aug. 2, 1991. Police believed or have been used to make two of the pipe bombs were found in Genrich's apartment. Shortly after the search Genrich said he was aware that police investigators had been following him. "Every time I go outside they get

allow him to close it, which Russell denied.) But he soon found himself sitting on his sagging brown couch talking to Russell, who stood over him while federal investigators looked through his belongings. Tucked under a radio on his dresser, they found a handwritten note scrawled on the back of an IRS envelope: "If I end up killing some stuck-up bitch don't blame me. I've asked everybody I know for help, but no one listens.... I've tried making friends with these girls around here, but they just keep treating me like I'm not good enough to talk to. Valentine's Day is coming and I still don't have a sweetheart.... It's been over a year now, and nobody has tried to help me yet. These girls still won't even talk to me. Fuck you all. I'll get even.... If I can't be happy, I might as well kill one."

They came back to the boardinghouse with a warrant and ransacked his room, as well as the home of his mother and his gentle, owl-eyed stepfather, Wallace Greenlee. They found no *Anarchist Cookbook*, no bomb-making instructions, and, despite thoroughly vacuuming carpets and furniture, no traces of gunpowder anywhere. All they came up with was a toolbox of electronics equipment, including some Buss-type stereo fuses like those in the bombs; a blue envelope with more handwritten notes in a similarly disturbing vein; and common household tools such as pliers and wire-strippers. They sent the tools to a forensic analyst in Maryland named John O'Neil. The hope was that if O'Neil could match marks made by Genrich's tools to marks found on recovered bomb fragments, they would have the physical evidence they needed to arrest him. Meanwhile, federal agents started openly tailing Genrich everywhere he went, blue jackets with yellow ATF letters flapping like neon signage.

By February 1992, nearly a year after the Valentine's bomb, O'Neil said he had matched Genrich's tools to all three bombs—plus an earlier, unexploded bomb from 1989, which had been found in the parking lot of the LaCourt Motor Lodge, right next door to the Two Rivers Convention Center. Investigators had used this bomb to figure out the other bombs' unusual "signature" construction: a galvanized-steel pipe four to six inches long, covered at each end with distinctive "Coin"-brand metal caps, ignited by an internal motion-sensitive mercury switch that triggered a Buss-type fuse soldered to an Energizer Everlast battery. The district attorney, Steve ErkenBrack, convened the first grand jury that Grand Junction had seen in years, and Genrich was indicted on 10 counts, including multiple counts of first-degree murder. Grand Junction police chief Darold Sloan called it "the most comprehensive investigation in my 23 years in law enforcement." All told, they spent more than \$1 million. ErkenBrack is convinced they got the right guy. "The multiple bombings stopped," he says, "as soon as we focused on Mr. Gen-

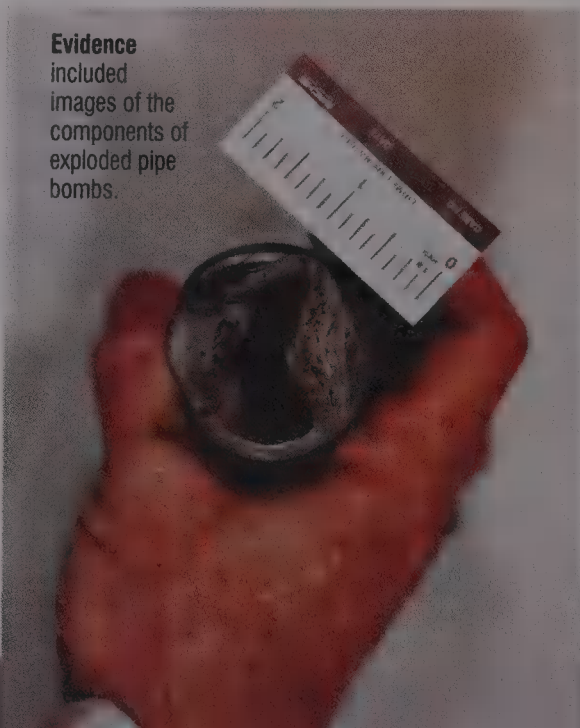


The trial set
Genrich's lawyer
Roberta "Bert"
Nieslanik against
District Attorney
Steve ErkenBrack.

**"The
bombings
stopped as
soon as we
focused on
Genrich."**

—District Attorney
Steve ErkenBrack

Evidence
included
images of the
components of
exploded pipe
bombs.



rich and seized his tools."

During the trial, ErkenBrack and the trial judge, Nicholas Massaro, agreed that Genrich's fate hung on the toolmarks, the only physical evidence that connected him to the bombs. In the early 1990s, few people challenged the foundations of forensic methods such as toolmark analysis. Since then, despite *CSI*-style portrayals of forensic analysts as crime-solving oracles, prominent scientists and criminal-justice experts have questioned many of the "pattern-matching" disciplines that rely on comparisons of bite marks, hairs, shoe prints, tire tracks, or fingerprints. These are different from, say, forensic DNA analysis, which relies on scientific principles like the known variations in the human genome. In contrast, pattern-matching examiners exercise an enormous amount of subjective judgment in determining what constitutes a match. In 2009 and 2016, major reports from the National Academy of Sciences (NAS) and the President's Council of Advisors on Science and Technology (PCAST) blasted pattern-matching disciplines as barely science at all. Nonetheless, most of these forensic techniques are as widespread today as they were when Genrich was convicted.

Calculating how many people might be incarcerated based on erroneous "matches" is notoriously difficult, but according to the Innocence Project, faulty forensic science is a factor in about half of wrongful convictions. More conservative estimates from the National Registry of Exonerations and from academic studies peg the number at between 24 and 34 percent. Many prosecutors and judges, however, insist there is no problem and that wrongful convictions are vanishingly rare. In 2007, Supreme Court Justice Antonin Scalia cited a prosecutor claiming courts convict with an "error rate of 0.027 percent—or a success rate of 99.973 percent." The prosecutor had divided the number of known exonerations over a 15-year period (a few hundred) by the total number of felony convictions in that period (15 million). It is wildly unlikely, however, that all wrongful convictions have been discovered. One academic study estimates that in capital cases—which receive far more post-conviction scrutiny than do other cases—one in 25 people set to be executed will have been wrongfully convicted. However you crunch the numbers, they are appallingly high, and could mean that thousands of people are behind bars partly because juries were swayed by unproven "science."

Today, Genrich is 55 years old and has been in prison for nearly 25 years for crimes he says he didn't commit. His latest appeal has been taken up by the Innocence Project, in the hopes of not only freeing Genrich, but getting the courts to recognize recent scientific challenges to forensic pattern-matching techniques that af-

fect hundreds of thousands of people at all levels of the criminal-justice system. In our investigation, we comprehensively reviewed the literature on handheld toolmarks published in forensic trade journals, dug through past legal rulings, pored over nearly 7,000 pages of trial transcripts, and conducted dozens of interviews with prosecutors, defense attorneys, forensic practitioners, judges, academics, and scientists, from Grand Junction to the Department of Justice. What we found was a startling lack of scientific support for forensic pattern-matching techniques such as toolmark analysis; a legal system that has failed to separate nonsense from science even in capital cases; and a consensus among prosecutors all the way up to the attorney general's office that scientifically dubious forensic techniques should be not only protected, but expanded. With Donald Trump in the White House and Jeff Sessions at the helm of the DOJ, the nominal momentum for forensic-science reform spurred by the two major reports is slowing. Genrich's case reveals a system that makes it nearly impossible to throw unproven forensic science out of courts and may be keeping thousands of innocent people behind bars.

THE ORIGIN OF FORENSICS

On a bitterly cold Valentine's Day in 1929, four men hired by Al Capone entered an unheated garage on Chicago's North Side and ordered the seven men inside to line up against a brick wall. Two men in suits and two men dressed as police officers carrying Tommy guns unleashed a barrage of bullets into henchmen of the infamous Chicago mobster George "Bugs" Moran. The police were stymied until they raided Fred "Killer" Burke's house and found guns they suspected might have been used in the massacre. Burke wouldn't confess, and the guns were the best evidence linking him to the crime, so they sent the weapons to Calvin Goddard, a former physician and pioneer in the new field of "forensic ballistics" at one of the nation's first crime laboratories. (His new method of matching bullet casings to guns had played a role in the controversial 1927 execution of Italian-American anarchists Sacco and Vanzetti.) Goddard fired "test" bullets from Burke's guns and, using a "split-image" comparison microscope he had helped invent for the purpose, matched grooved marks left on the test bullets and casings to those on bullets and casings found at the crime scene.

Goddard's forensic ballistics is now known as "firearm and toolmark analysis," and the field has since grown to include hundreds of examiners in crime labs nationwide. While making matches with household tools is less common, convictions have been secured in part based on marks left by knives, bolt cutters, bayonets, scissors, screwdrivers, pipe wrenches, or—as in Genrich's case—pliers and wire-strippers. These marks are often harder to parse than those on bullets, because while all bullets fired from a gun follow the same path down the same metal barrel, toolmarks depend on mul-

Al Capone's Valentine's Day Massacre resulted in one of the earliest uses of forensic ballistics.

By adopting the trappings of science, the forensic disciplines co-opted science's authority while abandoning its methods.

tle variable factors such as the angle and pressure with which a tool is applied to a surface, which may be hard or soft, spongy or brittle.

Firearm and toolmark analysis emerged out of a national push in the early 20th century to professionalize police investigative techniques at a moment when Americans were particularly enamored with science. Law enforcement borrowed terms from science, establishing crime "laboratories" staffed by forensic "scientists" who announced "theories" cloaked in their own specialized jargon. But forensic "science" focused on inventing clever ways to solve cases and win convictions; it was never about forming theories and testing them according to basic scientific standards. By adopting the trappings of science, the forensic disciplines co-opted its authority while abandoning its methods.

Amid the swirl of new forensic techniques, the courts realized there had to be a gatekeeping mechanism to filter out quackery. In 1923, the DC Court of Appeals provided that mechanism in *Frye v. United States*. The judges rejected a doctor's dubious claim that he could use a polygraph to detect when a person was lying from a rise in their blood pressure. In the ruling, the court said that in order for scientific evidence or expert testimony to be admitted, it must be offered by an experienced practitioner making inferences from a "well-recognized scientific principle" that has "general acceptance in the particular field in which it belongs." In *Frye*, the judges deemed the scientists in the "particular field" relevant to polygraph use to include psychologists and physiologists—not just polygraph practitioners who would, presumably, be biased toward preserving the technique's reputation. The effectiveness of *Frye* in keeping dubious science out of the courts depends on whom judges include in their definition of the "relevant scientific community." But as the decades wore on, and the forensic disciplines gained influence, judges tended to restrict their definition of the "relevant scientific community" to the forensic examiners themselves. Judges began taking advice on what counted as good forensics from the very people who invented the techniques and made a



Pieces of a pipe bomb are laid out in a photograph included in the trial evidence.



living off of them.

In the American criminal-justice system, where prosecutors regularly battle defense attorneys over what constitutes valid evidence, judges' rulings on admissibility are the final word. Once a technique has made it into court and survived appeals, subsequent judges, most of whom have no scientific training and little ability to assess the scientific validity of a technique, will continue to allow it by citing precedent. Forensic examiners, in turn, cite precedent in order to claim that their techniques are reliable science. Prosecutors point to guilty verdicts as evidence that the science brought to court was sound. In this circular way, legal rulings—which never really vetted the science to begin with—substitute for scientific proof. This is *Frye's* fatal flaw: Nowhere in this process is anyone required to provide empirical evidence that the techniques work as advertised. *Frye* aimed to keep pseudoscience out of the courts, but instead has helped create the perfect conditions to keep it in.

3 THE TOOLMARK ANALYST

By the time Genrich went on trial, the high-profile case had so saturated the local news that it was moved to the town of Greeley, on the other side of the Rockies. Inside an imposing courtroom with walls built of rare Colorado white marble—the

“Microscopically, we move from scratches to ridges and valleys. It becomes topography.”

—toolmark examiner John O’Neil, testifying before Genrich’s jury in 1991

same white marble used for the Tomb of the Unknown Soldier and the Lincoln Memorial—Genrich sat at the defense table waiting for a break in the day’s proceedings, when he would be allowed to play on the Game Boy that his public defender Roberta “Bert” Nieslanik brought him every day in her purse. He sat quietly next to co-counsel Greg Greer, who would occasionally reach out and place a hand gently on his arm. It was not clear to observers if Greer was comforting his client or subtly managing potential outbursts.

Ten days into the grueling five-week trial, ATF toolmark examiner John O’Neil took the stand. When tools are manufactured, he explained to the jurors ensconced in the marble jury box, processes such as grinding and milling create unique microscopic traits that can be used to distinguish even mass-produced tools. “Microscopically,” O’Neil said, “we move from scratches to ridges and valleys. It becomes topography.”

In the ATF lab outside Washington, DC, O’Neil had taken Genrich’s pliers and carefully scraped their open jaws across sheets of lead, copper, and aluminum to simulate the striated marks left behind when tightening a metal end cap. He had snipped pieces of copper wire similar to wires found in the debris swept up after the bombings. He then darkened the room and placed the samples side by side on his comparison microscope, overlaying the marks from his test

cuts with the marks found on the debris. He would tilt the light source to the side, he said, to illuminate the “ridges and valleys,” to “follow the flow of that shadow line in and out of the striae.”

In a dramatic video presentation—one of the first of its kind in the nation—he showed the jury exactly how he made his matches. The video started with a still frame: a split screen of the ends of two pieces of wire. On the right was the wire O’Neil had cut using Genrich’s red-handled needle-nose pliers. On the left was a scrap of insulated wire from the unexploded 1989 bomb found outside the LaCourt motel. Then the camera began to zoom in. “At 20 times its normal size,” O’Neil said, “you’re beginning to see some features of the topography...it has contours.” As it zoomed to 40, then to 80, he explained that he had to remove the light’s filter and bring its angle down “to see the shadows.” He pointed to two lines about a quarter of the way from the top of the screen that ran parallel to the cut. “And you simply find two lines similar to that in size and shape and follow them through and see if the rest of what you have falls in place.” He testified that this alignment was so improbable that Genrich’s tool must have cut the wire in the bomb, “to the exclusion of any other tool” in the world. He then proceeded to match Genrich’s wire-strippers to a wire found at the Valentine’s Day bomb site, and matched his yellow-handled slip-

joint pliers to scratches on the distinctive "Coin"-brand end-cap fragments that had been found at the scene of the Feed Lot bombing and that had sliced through the aorta of Dolores Gonzales.

When Nieslanik first saw this evidence, she was concerned. "I thought it was going to be a science," she says. Barely five feet tall, with a pixie cut and turquoise cowboy boots, she talks fast and rarely sits still. She is a tiny woman who takes up space. In preparation for trial, Nieslanik scoured the professional journals published by forensic practitioners to try and understand the technique. Nieslanik had majored in chemistry in college before switching to women's studies, and she had worked as the chemistry and physics laboratory coordinator at Mesa College before going to law school, so she was familiar with basic scientific concepts such as experimental design and statistics. She understood that just because Genrich's tool had made a particular mark, that did not prove it was the *only* tool that could make that mark. The wire-strippers and pliers in Genrich's toolbox were incredibly common—Nieslanik said she owned a pair. So how could the examiner know that the marks were unique to this set of wire-strippers or that set of pliers?

To her surprise, Nieslanik could find no scientific studies to back up the claims O'Neil was making. There was no standardized protocol to be followed. There were no criteria for how many points of similarity constituted a unique match. It seemed to be just O'Neil's subjective judgment. Then Nieslanik discovered that O'Neil had not submitted most of his test cuts into evidence. (The judge, infuriated upon learning this, held O'Neil in contempt of court.) O'Neil had decided over 50 cuts "were of little or no value" because they didn't match. "I thought, 'They just cut and cut and cut until they get one that matches,'" Nieslanik says. She recalls turning to her co-counsel and saying, "Holy shit, this is not science. It's just not science. It's like voodoo."

Even though she was convinced the field was "voodoo," Nieslanik followed legal protocol and requested an independent review of O'Neil's work. "It's a science that's questionable," she explains, "but you have to hire somebody that believes in it to advise you about it." A team of two other toolmark examiners came to look over O'Neil's work. By the time they arrived, he had already set up the evidence for them, marking his matches with blue dots, a practice that could bias any examiner's analysis. But the other examiners only agreed with O'Neil's match to the Valentine's Day bomb. All the other marks, they said, were inconclusive.

These conflicting results reinforced Nieslanik's intuition that the technique was unreliable, so she decided on a risky tactic: not just to challenge O'Neil, but to question the premise of his entire field, one that had been accepted into court since the turn of the 20th century. She called up Don Searls, a math professor at the local university who was unfamiliar with toolmark analysis. Nieslanik sent him the few papers she could find describing the field. Searls, who consulted for aerospace and pharmaceutical companies on experimental design, including for

"Holy shit, this is not science. It's like voodoo."

—Genrich's lawyer
Roberta "Bert"
Nieslanik on John
O'Neil's toolmark
analysis



A piece of one of the exploded Grand Junction pipe bombs. Below: A 1964 report documented an early crime lab belonging to the Boston police.

a NASA Apollo mission, was shocked. He testified that the field of toolmark analysis "does not have a scientific basis" and could not provide "credible evidence." He laid out how he would design a proper test, pointing out that several truly independent examiners—not ones who had blue dots arranged for them in advance—should test several tools of similar wear and tear, ideally without knowing which ones were the suspect's.

The prosecutor, ErkenBrack, countered with an analogy. "If I have a babysitter," he said, "and I come home and somebody has been in the fudge and there's a little tiny handprint on the plate, are you telling me that in order to be statistically valid, I need to get in four other three-year-olds to compare that handprint?" But ErkenBrack's commonsense analogy is flawed in a way that gets at the heart of the issue. He would only have to distinguish between the 3-year-old's hands and the babysitter's hands. The problem for forensic pattern-matchers is much more difficult. Imagine trying to figure out which 3-year-old stole a cookie from a picnic table in a New York City park, where any toddler could have wandered by. O'Neil had to conclude that Genrich's tools were the only ones in the *world* that could have made the marks.

Claims like "to the exclusion of any other tool" need to be supported by scientific studies that answer two crucial questions. First, do tools leave unique marks? If this is true in principle, you'd need to test if the technique works in practice: How reliably can human examiners distinguish toolmarks under conditions that resemble casework? In other words, how often do they make errors?

No human endeavor is perfect, yet many forensic examiners claim "zero" or near-zero error rates. In a widely cited 1984 paper in the *Journal of Forensic Sciences*, bite-mark examiners claimed a coincidental match would occur less than one in 10 quadrillion times. But when actually tested, even the most experienced examiners were wrong about one in six times, and in one study they struggled to distinguish a child's bite mark from an adult's. In 2009, the chief of the FBI Firearms-Toolmarks Unit wrote that a qualified examiner will





Laying out the evidence in Polaroid shots provided to *The Nation*.

“rarely if ever commit a false positive error (misidentification).” In practice, error rates for matching bullets to firearms can be dramatically higher: In 2008, the Detroit Police Department’s crime lab was shuttered when auditors found that its examiners made one error in every 10 cases. The head of the FBI’s fingerprint laboratory testified that its error rate was one in 11 million—because he knew of only one error in the FBI’s 11 million comparisons—but subsequent tests of fingerprint examiners show error rates ranging from one in 680 to one in 24.

These overblown and largely imaginary numbers—and forensic testimony offered with the certainty O’Neil claimed—are dangerous, because they give a false sense of scientific precision to juries and contribute to wrongful convictions. When examiners testify that they can make a match “to a reasonable degree of scientific certainty,” they are making what sounds like a statistical statement. Dr. Searls’s point was that they hadn’t done the studies required to back up such a statement, so there was no way for O’Neil to support his claims—the “match” was simply what he subjectively judged to be true. O’Neil, who is now retired and spends his time making rosaries, stands by his testimony as well as his decision to throw out the test cuts that didn’t match. “If I didn’t believe that I had found something, then I wouldn’t have testified to it.”

But abstract arguments, while convincing to statisticians like Dr. Searls, do not have the same effect on juries as a video where they can see lines matching up. As deliberations started in the Genrich case, the jury was split 50/50 on the question of his guilt. They asked to see O’Neil’s video several times while deliberating. After an agonizing four days, they delivered the guilty verdict. “They all matched. It was a perfect match,” juror David Trujillo later told the local paper.

“They all matched. It was a perfect match.”

—David Trujillo, member of the jury that convicted Genrich, on the pattern-matching forensics

4 “A FORENSIC COMMUNITY IN DISARRAY”

Over the past century, thanks to the 1923 *Frye* ruling putting judges in charge of evaluating science, dubious forensic techniques have proved devilishly difficult to expel from the courts. Consider bite-mark matching, which arose out of a single case in 1974, when Walter Edgar Marx was convicted of involuntary manslaughter. Investigators

had exhumed the body of the victim six weeks after she’d been buried, and three dentists matched a series of lacerations around her nose to a plaster cast of Marx’s bite. An appeals court acknowledged that there weren’t any scientific studies validating the technique, or showing that bite-mark examiners could reliably match a bite mark left on skin to a person’s teeth, but found the three dentists to have credible expertise matching dental remains from deceased people to patients’ dental records. The court inferred that looking at bite marks left in a cadaver’s skin was sufficiently similar. The judges seemed impressed by the methods, which included X-rays and 3-D models. In a final rebuke to science, the court ruled that not to allow the evidence would be to “sacrifice...common sense.” This case established the precedent for almost all subsequent rulings on bite-mark evidence, including the 1983 case of a Wisconsin man named Robert Lee Stinson, who was convicted in the rape and murder of a 63-year-old woman almost entirely on bite-mark evidence. Using a photograph of the victim’s body and a plaster cast of Stinson’s teeth, dentists testified that the marks matched “to a reasonable degree of scientific certainty.” The appeals court was convinced by the analysis: “the lateral incisor in the upper jaw was set back from the other teeth; all of the upper front teeth were flared; the lower right lateral incisor was worn to a pointed edge; the right incisor was set out from the other teeth on the lower jaw.” The dentists even compared Stinson’s bite to his twin brother’s. The judges concluded that the “bite-mark evidence in this case was sufficient to exclude to a moral certainty every reasonable hypothesis of innocence,” upholding Stinson’s conviction.

Twenty-three years later, DNA evidence exonerated Stinson. The 3-D models, the detailed descriptions of his incisors, the “moral certainty” of his guilt—everyone had been convinced. And everyone had been wrong. The scientific tide has since turned. Dentists have recanted their testimony and disavowed the method. The Texas Commission on Forensic Science called for a “moratorium” on bite-mark evidence. A study conducted by the president-elect of the American Board of Forensic Odontology revealed that 96 percent of the time, bite-mark examiners couldn’t unanimously agree on whether a bite mark came from a human, and the organization advised its members not to make identifications based on bite marks alone. And yet Stinson’s case still stands as precedent in Wisconsin courts, meaning other judges can cite it to admit bite-mark evidence. Its use is in decline, but there has never been a single ruling to exclude it.

Shockingly, the Supreme Court didn’t weigh in on the admissibility of forensic evidence until 70 years after *Frye*, in 1993—about two months after Genrich was found guilty. The high court’s ruling mandated that judges allow only scientific evidence supported by testable claims, and that proponents of the evidence must be able to provide measures of how often examiners make mistakes. What’s now known as the Daubert standard is federal law and has been adopted by most states, but it has had little effect in criminal law because most judges

still rely on precedent, assuming evidence was vetted in past cases. “Judges,” said Harry T. Edwards, chief judge for the DC Circuit Court of Appeals, at a Harvard event last October, “believe that because we said it before, it must be right, and because these practitioners have been around for a long time, it must be right. In other words, history is the proof.” When it comes to booting flawed science out of criminal courts, “Daubert,” said Judge Edwards, “has largely been a failure.”

In 2009, the National Academy of Sciences performed the most sweeping independent survey of the state of forensic science to date. It was a bombshell. “Much forensic evidence—including, for example, bitemarks and firearm and toolmark identifications—is introduced in criminal trials without any meaningful scientific validation, determination of error rates, or reliability testing to explain the limits of the discipline,” the report noted. Forensic examiners in pattern-matching disciplines, it concluded, had no scientific basis for making claims of certainty in court. Professional societies gave no guidelines for testimony. Labs had no standard accreditation or certification procedures. There had been little research on variability, reliability, or human bias. Judge Edwards, who co-chaired one of the report’s subcommittees, said at Harvard, “We found a forensic community in disarray.”

While some in the forensic community dismissed the report, others embraced its recommendations, and for several years, a spirit of reform was in the air. The overall feeling was that more research was needed. “In forensic science,” says John Murdock, a preeminent former FBI firearm and toolmark examiner, “the research has been done by practitioners.” When we reached him by phone, Murdock was clearing his weekend schedule to take (unpaid) proficiency tests—relatively easy matching exams usually given by private companies—sent out by the FBI. He had also paid, out of pocket, to receive samples for a high-quality and much more difficult proficiency test being conducted in the Netherlands using polymer replicas of bullets. While these efforts are laudable, placing responsibility in the hands of working practitioners such as Murdock is not a feasible research strategy. Forensics lacks the infrastructure and the funding to support research. “It’s hard to create a research culture when you can’t afford research,” said Victor Weedn, a professor of forensic sciences at George Washington University and past president of the American Academy of Forensic Sciences. Many argue that the research shouldn’t be done by forensics examiners at all, but by academic scientists,

“Judges believe that because we said it before, it must be right. History is the proof.”

—Harry T. Edwards,
chief judge for the
DC Circuit Court of
Appeals

A bomb hidden
in the left rear wheel
well of the Gonzales
family van tore
through the floor and
killed 12-year-old
Dolores.



who have university infrastructure and funding and can independently evaluate examiners’ claims.

In 2013, the Department of Justice under President Obama established the National Commission on Forensic Science, an interdisciplinary advisory committee including forensic practitioners as well as prominent scientists and attorneys, as a way of “passing the torch in forensic reform from the National Academy of Sciences.” The commission met quarterly and made non-binding recommendations to the DOJ, some of which were adopted, including a new code of professional conduct for laboratories and the recommendation to drop the phrase “to a reasonable degree of scientific certainty” from examiner testimony—a dangerously misleading statement in the absence of empirical data. Grant funding for research was increased, and the National Institute of Standards and Technology established working groups for each forensic discipline to set standards for the field.

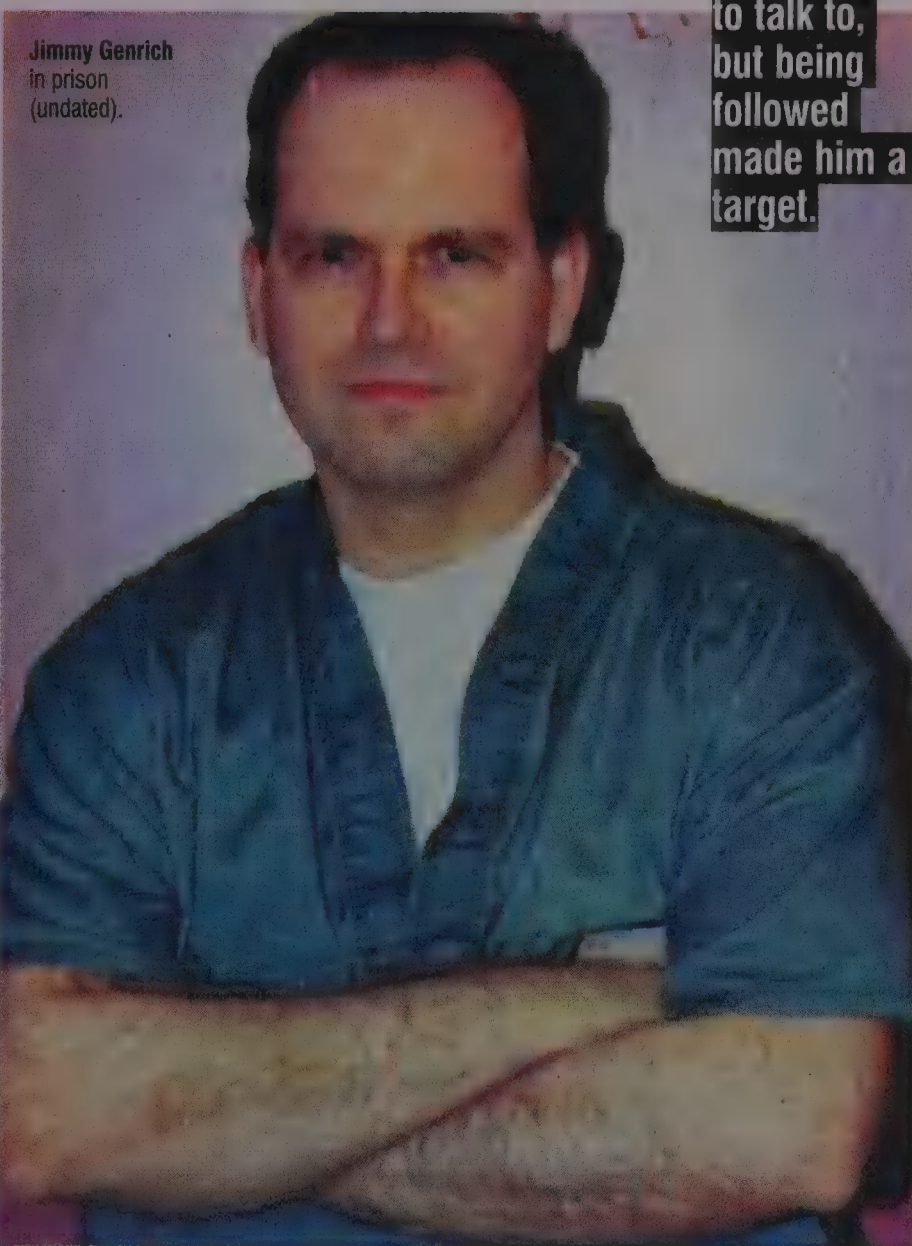
Then, in 2016, Obama’s scientific advisory council, PCAST, comprising prominent scientists and experts in academia and industry, issued a follow-up report. The years of nominal reform had apparently had little substantive effect on getting unproven “science” out of the courts. “It has become increasingly clear in recent years that lack of rigor in the assessment of the scientific validity of forensic evidence is not just a hypothetical problem but a real and significant weakness in the judicial system,” the report concluded. One of PCAST’s most contentious conclusions was the lack of support for firearm and toolmark analysis. The council found a number of studies that “sought to estimate the accuracy of examiners’ conclusions” but said only one study that included 218 examiners was “appropriately-designed” according to basic scientific standards. Despite examiners’ claims of near-infallibility, that study found a false-match rate of one in 100. A vast body of research of widely varying quality suggests that matching bullets to guns may have a scientific basis, though examiners are nowhere near infallible. For a widespread technique like firearm analysis, the lack of empirical data for error rates was shocking.

Because PCAST did not directly assess the skill of examiners who match marks from handheld tools like wire-strippers and pliers, we conducted our own review of the field and consulted with several leading toolmark examiners. We found a wealth of literature on the uniqueness of marks and the manufacturing process; a growing literature on quantifying the variability of striations; and results of examiner-proficiency tests. However, we found only a single study, from 2009, that tested toolmark examiners’ abilities in a controlled setting. The

FBI tested eight of its own examiners analyzing marks left by screwdrivers. Promisingly, these eight examiners made no errors. But one small study, in which the researchers have a vested interest in the outcome, on one type of tool, is hardly a validation of the field, leaving the crucial question of error rates unanswered. Because firearms are a specialized type of tool, examiners point to firearms studies to support their work with handheld tools, but what seem like logical inferences don't always hold up: Forensic dentists wrongly thought they could match bite marks because they could identify people from dental remains. Without empirical research, it's difficult to say if handheld toolmark matching is more like firearms (i.e., needs more research) or more like bite marks (i.e., needs to be abandoned). Regardless, it's wildly unlikely that examiners can make matches "to the exclusion of all other tools."

Rather than spurring a constructive debate about reform, PCAST dramatically widened a growing divide between mainstream academia and the forensic community. As defense attorneys reached for the reports to challenge forensic evidence in court, prosecutors rushed to defend one of their most powerful tools. Battle lines were drawn: Forensic examiners, law enforcement, and prosecutors

Attention from federal agents was a double-edged sword. Genrich had no one else to talk to, but being followed made him a target.



Jimmy Genrich
in prison
(undated).

gathered on one side, defense attorneys and mainstream scientists on the other. It was a perfect political storm.

5 JIMMY GENRICH'S PAST

Sheila Greenlee wears a bright floral house-dress at the dining-room table, smoothing her flyaway gray bob when she needs to gather her thoughts. She is prone to brief fits of giggling when her memory alights on places too painful to stay for long. A grand piano takes up most of the living room in the split-level home she shares with her husband, Wallace, the choir director at the Methodist church where she played the organ for so many years. Their modest house sits at the end of a quiet cul-de-sac on the southwest edge of town, just shy of the sheer-walled canyons of the Colorado National Monument. Sheila describes her son Jimmy as a shy young man who liked books and Nintendo video games. She also says he grew up poor and was abused as a child by his father, a violent drunk. Genrich had two brothers and one sister until his little brother Teddy had a swimming accident one Fourth of July. Genrich was 18 years old, and he was devastated by Teddy's death.

James Martinez, a childhood friend who grew up across the street and now owns a motorcycle- and car-repair shop, remembers Genrich as a nerdy kid who rarely spoke unless spoken to. "We were all scared of his father," says Martinez. "I remember we'd be in his room, listening to AC/DC, and we'd all go out the window when his dad came home. Jimmy would protect his little brother, and get his ass kicked for it."

It seemed to Sheila, for a time, that her awkward son might be all right. After high school, Genrich moved to Phoenix to attend DeVry University, where he studied electronics (a fact made much of during the trial). When Martinez moved to Phoenix to work in a custom-hot-rod shop, Genrich was already there. "He had good grades. He was doing well. Where he fell into trouble might have been my fault," Martinez shakes his head regretfully. "My best friends were all longhairs and bikers in bands." He introduced the bikers to Genrich, who moved into a spare room in their rowdy house. "People thought he was weird," says Martinez. "As he got older, he was still the nerd, but he turned into a man. He would say, 'No woman will ever want me—I'm the ugliest guy in the room.'" His grades at DeVry plummeted and he struggled with a required English class, then eventually dropped out. He was drinking heavily and, Martinez says, picked up a meth habit from his biker housemates.

When investigators later questioned Martinez, he insisted he never saw Genrich making bombs. "I would have known," he says. "He was living in my house. Jimmy was my friend, but he wasn't that good of a friend where I would lie for him."

Genrich moved back to Grand Junction in July of 1989 and struggled to pull a life together. He worked various jobs, including a stint as a dishwasher at the Two Rivers Convention Center—a boss later described him as "the sole problem employee." His boss at Suehiro's,

where he was also a dishwasher, told the *Daily Sentinel* he had a temper. "He would yell at me and leave. Then come back a few days later and say he's sorry. I always gave him his job back because he's a good person," his boss said. "He's very honest."

Genrich desperately wanted a girlfriend but was consumed by frustrations that girls wouldn't "give him the time of day." Sheila says he struggled with loneliness. "He craved it, and yet he didn't want to be alone," she says. "He used to say to me, 'Mom, you have to help me find a girlfriend.'" Sheila and Wallace agree that he was increasingly "moody," and he began to get into trouble for angry outbursts. They took him along on a car trip to Canada, to visit Sheila's family, and he "threw rocks at cars because the people weren't friendly." Back in Grand Junction, Genrich was arrested for breaking the glass of an Albertsons exit door after he claimed employees snubbed him.

On February 10, 1990, Sheila took her son to St. Mary's hospital for an involuntary, 72-hour psychiatric evaluation. He had attempted suicide once before, as a teenager, when he swallowed a bottle of aspirin after a girl had rejected him. In an affidavit, later quoted by investigators in a search warrant, Sheila stated that her son "appears to be mentally ill and, as a result of such illness, appears to be a danger to himself or others."

There were more outbursts. In 1991, he furiously knocked books from shelves at the library after the librarians, he said, wouldn't help him. At the Readmor bookstore, where his request for *The Anarchist Cookbook* made him the lead suspect, Genrich knocked books from shelves and spit on the windows. When asked why her son would want to order that book, Sheila sighs. "Knowing Jimmy, they were probably giving him a hard time." Genrich later told an ATF agent he had tried to order it to "piss the lady off at the bookstore."

After the ATF started trailing him, Genrich met his future lawyer Bert Nieslanik by climbing the steps to the public defender's office to ask if the agents were allowed to follow him. He complained about them to Nieslanik, to his mother, and to the agents themselves. He took to talking with the agents, sometimes getting into their car for an hour or more to vent his frustrations about his life and ask when they were going to start looking for the real bomber. One night, according to an ATF agent, Genrich came out of his boardinghouse and got into the car with a handful of photographs. "He had brought me pictures of some bookshelves...we were talking about the tools, and he was telling me about this woodworking project that he had...he asked if I wanted to come in and take a look at these pictures, and I declined that night, but he brought the pictures out. He showed me the pictures of bookshelves that he had made for his mom and, also, a postcard of Crazy Horse Monument, up in South Dakota, I believe."

Nieslanik says the attention from the ATF agents was a double-edged sword. Genrich had no one else to talk to, but having the feds follow him around made him a target for the town's fears about the bombings—television-

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Genrich found guilty

Jury convicts bomber of 1st-degree murder

By Staff Writers

GRAND JUNCTION — A Weld County jury that found James Genrich guilty Friday of first-degree murder in the 1991 Grand Junction pipe bombings and Genrich's own words convicted him.

"The all matched. It was a perfect match," juror David Trujillo said of the foot marks made by yellow-handled pliers and red-handled wire strippers. The jurors took an immediate vote when they began their deliberations. Trujillo said that vote was split in half for convicting Genrich.

But during their more than 30 hours of deliberations over four days, they reviewed the videotape and photographs of the foot marks several times. The videotape of the microscopic prints was used in the trial.

To watch through the nearly four weeks of testimony, jurors relied on their notes and systematically reviewed each of the three bombings individually, Trujillo said.

"It was real hard. There were a lot of ifs and buts about it. There was a lot of discussion," juror David Trujillo said.

The seven-member jury convicted Genrich, 30, on nine counts. Two of those counts were for the first-degree murder of Maria Delores Gonzalez, 12, and Maria Ruelas, 43.

Genrich faces a mandatory life sentence without parole, and his sentencing hearing will be set Monday.

The six other convictions were for use of explosives in the commission of felonies and third-degree assault against Grand Junction resident Dennis Lamb, 30.

Genrich showed little emotion after the verdict was read Friday afternoon for the bombings. He was convicted of the bombings on March 3 and June 4, 1991.

But as he was escorted from the courtroom, he said, "You son of a bitch to Mesa County Sheriff Attorney Steve Krausback, who did not respond."

During the verdict, Genrich did look over at his mother, Sheila Greenlee, who turned her face away.

Genrich was convicted of the bombings on March 3 and June 4, 1991.

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'Justice is served,' victim's family says

By Staff Writers

GRAND JUNCTION — As the members of the courtroom Friday afternoon after convicting James Genrich, showed "thank you" to the jurors.

For them, the conviction of the man who killed Maria Gonzalez, 12, and Maria Ruelas, 43, ended two long years of waiting for justice.

"Justice is served," said Susan Ruelas, Genrich's widow. She has lived with the horror of the explosion in the Pied Lot restaurant parking lot that was so powerful it bowed out the roof of the building.

When Henry died on June 4, 1991, it came at the end of a day in which she was walking through downtown, enjoying the air and each other, before going to the Pied Lot.

"I don't think anyone knows what this has been like," she said. She has tried to attain even court hearing since Genrich's arrest in February 1992. She traveled from Grand Junction to attend several days of the first trial in February.

"It's been too long," she said, adding that now she can begin to get her life back to normal.

"You do not know what this has done to her life and to all of our lives," said Joe Higgins, Henry's sister. "She has agonized over this trial. It has totally affected her health. There hasn't a day she hasn't lived with the repercussions of this tragedy."

For Henry's 22-year-old daughter, the trial closed a chapter, but it was not the end.

"I don't feel there's closure. There will never be closure in my life or my family's life," said Carrie Vandegraaf.

A University of Northern Colorado graduate, she attended every day of the trial.

"We didn't deserve to die. My family, my sisters and I. We didn't deserve to suffer the way we do," she said, referring to the court hearing since Genrich's arrest in February 1992. She traveled from Grand Junction to attend several days of the first trial in February.

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"It's been too long," she said, adding that now she can begin to get her life back to normal.

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Genrich was convicted after an agonizing four days of jury deliberations.

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—Sheila Greenlee, mother of Jimmy Genrich

news cameras sometimes followed in the agents' wake. One night, a man in the Corral attacked Genrich, bringing him to his knees. He was hurt and confused that the agents, who were there, did nothing to protect him. In July, ATF agent Larry Kresl took Genrich to lunch, then said he'd take him to the Job Services Center and help him find a job. Instead, Kresl took him to a room hung with grisly pictures of the victims' bodies, and tried to elicit a confession. Genrich did not confess.

Four days later, agents followed him to Teddy's grave and suggested Genrich commit suicide "so we can all go home." After hearing of the agents' behavior at trial, Judge Massaro said that "more repulsive governmental conduct, absent the infliction of actual harm, is difficult to imagine."

In August, a federal agent named Bill Frangis came to Sheila and Wallace's home and told them the case against Genrich was "overwhelming." Sheila agitatedly clasps and unclasps her hands on the dining-room table as she remembers. "If the locals got him," she recalls Frangis telling her, "he would be put to death. But if the feds looked after him, he'd try to save him." Sheila glances at Wallace, who regards her calmly. "He was charming," she continues. "I made him tea. He acted like he was going to help us." Frangis asked Sheila to wear a wire and try to get her son to confess. "I was stunned," she says, "because I knew that he didn't do it." Once she heard about the death penalty, Sheila says, "I was terrified," but she couldn't bring herself to wear the wire. Wallace, sensing her agony, stepped in and offered to wear it. "It was just like, his life was in danger," Wallace recalls in a soft voice. A few weeks later, the feds came back and taped a wire to Wallace's chest. In a tearful conversation in the living room, while ATF agents sat outside in their car listening in, Sheila and Wallace told Genrich that they loved him, that they would love him no matter what, and that he just needed to tell them if he did it. Sheila says she was trying to save his life. "He looked at me and said, 'Mom, do you believe I did that?'" Genrich did not confess.

Before all this, Sheila says, "I believed in [law enforcement] wholeheartedly. I believed in them, A-one. Boy, has that changed. And I don't say they're all bad, by any means. But I can understand how they can twist things."

Martinez understands that Genrich comes off as "weird." But, he insists, "He didn't have a violent bone

in his body. He never hurt anybody. He was the one getting hurt." Martinez shakes his head. "He was like that puppy who'd been beat, and you look at him and their tail goes between their legs, and they're hunched over. That was Jimmy. Intimidated, you know?" He is particularly skeptical they got the right guy because on April 14, 1989, when the unexploded bomb was found outside the LaCourt motel, Genrich had an ironclad alibi.

REASONABLE DOUBT

BOne of the remarkable things about the Genrich case is that other than the toolmarks, it was built almost entirely on circumstantial evidence. There was no confession, no reliable eyewitness, no gunpowder, no DNA. Just an isolated, angry young man with a history of mental illness who made women uncomfortable and once asked about *The Anarchist Cookbook*, who lived in a messy 12-by-12 room with a toolbox and a pile of disturbing handwritten notes. If you believed this was the type of person to carry out a bombing, then the toolmark evidence confirmed what you already suspected to be true.

But if you trusted the toolmarks, then you'd struggle to explain how O'Neil matched Genrich's needle-nose pliers to a bomb he couldn't have planted. On April 14, 1989, the day the unexploded bomb was discovered in the LaCourt motel parking lot, Genrich was 580 miles away, in Phoenix. Registers from Houle's bookstore showed his handwritten entries recording stock being returned to publishers on the day the bomb was found. The store owner testified that Genrich had worked every day that week, including a six-and-a-half-hour shift on the day the bomb was found. Investigators scoured plane records and car-rental registries but could find no evidence he had left Arizona. The prosecution suggested the circular theory that Genrich could have had an accomplice who planted that bomb, because he couldn't have set the bomb himself. There was, however, no evidence that pointed to an accomplice. It stretches the imagination to believe Genrich was the 1989 bomber and also to believe O'Neil's toolmark analysis to be reliable.

One of the key pieces of circumstantial evidence that convinced both the investigators and the jury was the unsettling handwritten notes. In his opening statement, ErkenBrack said, "Mr. Genrich was a very, very angry man, especially with women, but angry at everyone. You will hear Mr. Genrich said time and time again that he had a problem with women." In the search-warrant affidavit, investigator Bob Russell writes that the Feed Lot bomb was placed near a car's front right tire, and "this would be the side most ordinarily used by the female." This logic falls apart a bit, however, when you consider that the Gonzales bomb was placed by a rear tire and the LaCourt motel bomb by

"[Genrich] looked homeless, unkempt, agitated. Crazy, but innocent."

—Genrich's lawyer
Bert Nieslanik

ATF agents investigating ■ bombing.



the driver's side. Judge Massaro noted that the bombs did not seem to have been placed in areas obviously frequented by women.

And while the handwritten notes are undoubtedly disturbing, if looked at in a slightly different light, they don't obviously point to a serial bomber. After Sheila had her son briefly committed, Genrich started seeing a therapist who encouraged him to write down his feelings instead of, as he told *The Denver Post*, "losing my temper." According to Genrich, these were the notes the ATF agents found when they searched his home. "I don't hate women, I really don't.... I'd get drunk and pissed off, so I'd write it down instead of going out and getting into trouble," he told the *Post*. The closest Genrich ever came to a confession was telling the ATF agents, "I'm not a bomber, but I should be a rapist."

When Nieslanik first met Genrich, she says, he "looked homeless, unkempt, agitated." He had trouble making eye contact and seemed paranoid, but she says he wasn't a bomber. "Cra-zy," she singsongs, "but innocent."

Taken together, the circumstantial evidence against Genrich was ambiguous at best. He could have constructed the electrical circuit, but so could many other people in Grand Junction. He had Buss-type fuses in his toolbox, but no trace of gunpowder was ever found. The letters clearly threatened violence toward women, but the bombs seemed to target random strangers. He lived close to two of the bomb sites, and he was known to take long, meandering walks around town, but it would require steely nerve and a steady gait to carry a bomb with a hair-trigger switch two miles to the Gonzales home. Genrich asked for *The Anarchist Cookbook* after the bombings had already started. And if you read the book, you'd notice it does not include directions or a diagram that "describes precisely how you make the bombs that were used in this case," as ErkenBrack claimed in court. Then there's that ironclad alibi for the LaCourt motel bomb.

So you're left with toolmarks. The only match that all examiners agreed on was between a pair of Genrich's red-handled wire-strippers and scratches left on a piece of baling wire found near the Valentine's Day bomb. Baling wire, a farm fix-all as common as duct tape in Grand Junction, was not the type of wire included in the "signature bomb," nor is it particularly well suited for a bomb circuit. In most cases that go to trial, there are multiple converging lines of evidence, but not in the case of Jimmy Genrich. If you believe O'Neil can trace shadow lines across a toolmark's microscopic ridges and valleys until it all "falls in place," then Genrich is guilty. But if you believe O'Neil had only to tilt the light just right to bring into view what he was seeking to find, then an innocent man may be in prison.

7 PROSECUTORS AND NATIONAL REFORM

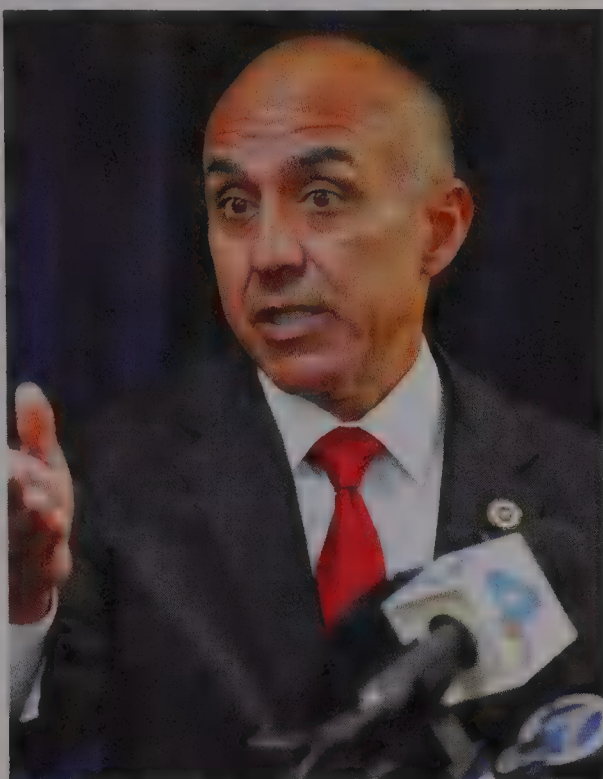
The 2009 NAS report that upended the nation's confidence in long-trusted forensic techniques had an unlikely instigator: Jeff Sessions. In 2000, Sessions proposed a bill to increase funding for crime laboratories struggling with backlogs; the bill passed, but most of the money never materialized. Leaders in the forensics community lobbied until the Senate finally included \$1.5 million in a 2005 appropriations bill to fund an NAS report "identifying the needs of the forensics community." It was meant to provide the "basis for legislation" that a senator like Sessions could introduce again to secure more crime-lab funding.

"He's a former prosecutor," says Erin Murphy, a professor of law at NYU and author of *Inside the Cell: The Dark Side of Forensic DNA*. "He was really interested in helping law enforcement basically use more forensics. He thought he was going to commission a study where they'd come back and say, 'Well, we need 6,000 more bite-mark examiners and 400 more toolmark examiners.' Instead, of course, they got the study they got, which basically said half of these sciences are garbage, the other half may have some basis but need more empirical work, there's rampant overclaiming, there's rampant bias. It was really a full-throated list of all of the problems in forensics."

Sessions rejected the study's conclusions. "I don't think we should suggest that those proven scientific principles that we've been using for decades are somehow uncertain," he said in a Senate hearing after the report's release.

Prosecutors have a vested interest in resisting reform, because it could weaken one of their most powerful tools, threaten cases currently under way, and call past convictions into question. For years, the DOJ was aware that its hair-comparison examiners made mistakes, but the department did little to address the problem until a whistle-blower came forward in the early 1990s. During an eight-year review of 2,900 cases, the DOJ found several instances of potentially exculpatory evidence but only haphazardly notified defendants, if at all. This review remained secret until 2012, when *The Washington Post* broke the story that the department had never followed up on its mistakes. In 2015, the DOJ finally conceded that hair-comparison examiners gave flawed testimony in 96 percent of cases, including 33 of 35 death-penalty cases reviewed. Nine of those defendants had already been executed. One defendant served 28 years in prison before being exonerated by DNA testing. In court, the prosecution said it was a "one in 10 million" chance the hairs belonged to someone other than the defendant. One of the hairs turned out to be a dog's.

Trusting prosecutors to reform forensics presents a clear conflict of interest. Prosecutors at all levels work



San Bernardino
County District
Attorney Mike
Ramos.

closely with forensic practitioners—some crime labs report directly to DA offices—and they see themselves as being on the same team. When that relationship is too cozy, unconscious cognitive bias can curdle casework (such as examiners unconsciously seeking evidence that confirms opinions held by law enforcement). While some communication between prosecutors and forensic practitioners may be necessary, practices designed to curb cognitive bias vary widely. Police departments frequently share crucial information about cases, so examiners know what their colleagues want them to find. Crime labs in at least a dozen states receive funding through court fees—but only when their analyses result in convictions. In the Genrich case, O'Neil was flown to Grand Junction to meet with prosecutors during the course of his analysis. ErkenBrack was

even present in the lab for the retest. Prosecutors rely on examiners to solve crimes and win convictions.

Still, prosecutors have a legal and ethical obligation not to present evidence they know isn't true in court. Unfortunately, like judges, most prosecutors are not equipped to evaluate the scientific merit of forensic techniques, and even if they are acting in good faith, the incentives are all wrong. Prosecutors feel immense pressure to present forensic evidence to juries—many prosecutors believe juries can be reluctant to convict without it—a phenomenon dubbed "the CSI effect." Bill Fitzpatrick, district attorney of New York's Onondaga County and a past president of the National District Attorneys Association, says "people forget we are seekers of the truth," but he has been a vocal opponent of efforts to limit forensic-expert testimony. "What are we going to say? 'That fingerprint maybe came from that hand'? 'That bullet maybe came from that gun'? No, we'd get no convictions." Acknowledging the limitations of forensic techniques is perceived as opening the door to reasonable doubt.

Scandals like the DOJ's hair-comparison cover-up have shaken public confidence in forensic evidence and prosecutors' willingness to own up to mistakes, yet many prosecutors maintain faith in a system shown repeatedly to fail. "There are many layers to protect the judicial process when we're talking about scientific evidence," says Mike Ramos, district attorney of San Bernardino County and another former president of the NDAA. "Every time I've used the scientific-based evidence, it has been tested. They do an analysis, and that's brought before the jury—'here's how it was done, here's how it was tested'—to make sure that it was based on a protocol that has been used, and has gone through the tests, through all of the layers." In any case, this reasoning goes, the defense can challenge any claim in an evidentiary hearing, as well as cross-examine expert witnesses, and, in the end, there's a jury to decide. "We still have a system in place that I be-

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—Bill Fitzpatrick,
former president of
the National District
Attorneys Association

lieve works," says Ramos. "The last thing we want to do is convict someone who's innocent."

When asked if there were any conflicts of interest in prosecutorial agencies such as the DOJ overseeing forensic-science reform, Ramos said, "I don't see a bias."

One of the NAS report's first recommendations was that reform be independent of prosecutorial agencies. It suggested a new federal agency, the National Institute of Forensic Science, an independent body (a bit like the FDA) that would encourage empirical testing of forensic techniques before they enter the courts, establish mandatory lab accreditation and examiner certification, and standardize expert testimony. Judge Edwards, who co-chaired one of the NAS committees, said at the Harvard event last October, "One of our most important recommendations was not having forensic science reform in DOJ. Prosecution is not consistent with a culture of science. We unanimously viewed that DOJ had to be kept out of it."

The independent body suggested by the NAS was never created, and the DOJ has pushed back against independent reform. When Obama suggested PCAST look into forensic science, co-chair Eric Lander, a biologist at MIT and Harvard and leader of the Human Genome Project who also serves on the board of the Innocence Project, took the idea to the DOJ: "They had a fit," he said at Harvard last October. "You realize this could jeopardize existing cases and past convictions?" Reform that acknowledges longstanding problems with forensic evidence would, indeed, be deeply disruptive. It could mean that some people who have committed crimes would go free, but it would also mean that innocent people would be freed, and that serious flaws in the justice system could be corrected.

When the report was issued, Attorney General Loretta Lynch disavowed its conclusions: "While we appreciate their contribution to the field of scientific inquiry," she said, "the department will not be adopting the recommendations related to the admissibility of forensic science evidence."

Two months after being sworn in as attorney general, Sessions allowed the National Commission on Forensic Science to expire and suspended the ongoing review of examiner-testimony standards. A new Justice Department Task Force on Crime Reduction and Public Safety, established by executive order to "support law enforcement" and "restore public safety," now oversees forensic science at the national level. Sessions

has appointed a new senior adviser on forensics to lead an internal Forensic Science Working Group in conducting a "needs assessment of forensic science laboratories that examines workload, backlog, personnel and equipment needs of public crime laboratories," as well as to "strengthen the foundations of forensic science." In public statements, Sessions has returned to his rhetoric of the early 2000s: The purpose of forensic-science "reform" is to reduce crime-lab backlogs, and should be run by law enforcement and forensic practitioners. Prosecutors applauded Sessions's move to put the DOJ back in charge.

It's still unclear how the DOJ will handle its newfound mandate, but Sessions's pick to lead the internal Forensic Science Working Group offers a clue. Ted Hunt, a Missouri prosecutor, was a member of the now-defunct National Commission on Forensic Science, where he voted against many reform measures, including crime-lab oversight measures and scientific evaluations of forensic methods. Although the DOJ revived its review of expert-testimony standards last August, Hunt was also one of just two members of the NCFS to oppose dropping the misleading phrase "to a reasonable degree of scientific certainty" from examiners' testimony.

Hunt has stayed out of the limelight since his appointment, but records we obtained from recent meetings are revealing. In a meeting of the federal judiciary's Advisory Committee on Rules of Evidence, Hunt blasted PCAST for its "narrow" definition of science and called PCAST's insistence on empirical research methods "wrong and ill-advised." At an October meeting at the National Academy of Sciences, he stated that "the jury is still out on bite marks," inspiring at least two other participants to state firmly that "the jury is not out" on bite marks. Further, Hunt declared that how best to establish a method's scientific validity amounts to a "difference of opinion." At that point in the meeting, an MIT sociologist, Susan Silbey, felt compelled to speak up. She began reading out loud the requirements from PCAST's report, such as having sufficient sample sizes and blinding subjects from the test. "PCAST is requesting basic scientific research methods. I teach scientific methodology every Friday at 9 AM. This is what I teach in my class."

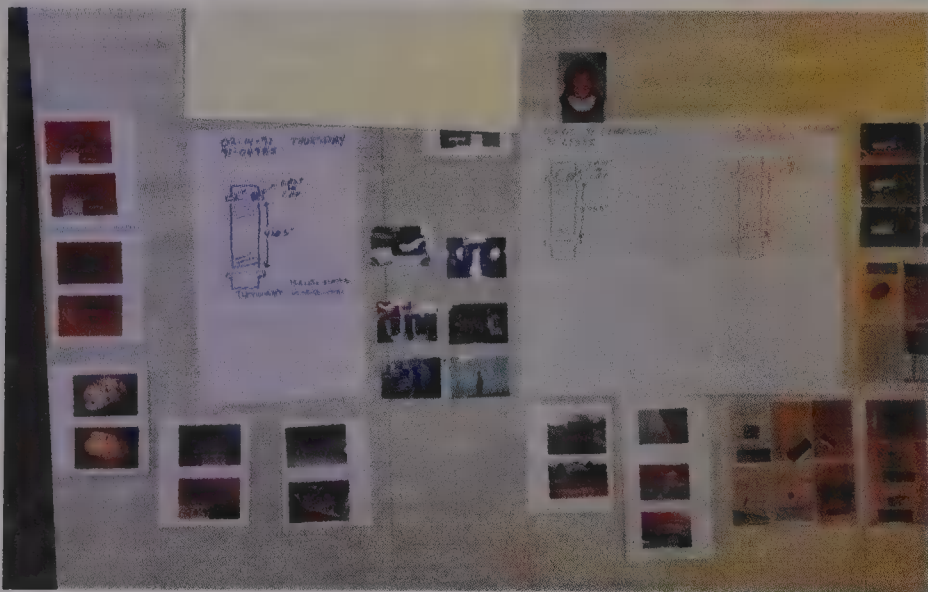
Both Hunt and the DOJ declined to comment on whether they support dropping the scientifically dubious phrase "to a reasonable degree of scientific certainty" from examiner testimony. When asked if he thought prosecutors might have reasons to resist reforms that soften the language of examiners' claims in court, Hunt replied, "I can unequivocally say that I don't know of any prosecutor who would consciously choose to offer unreliable evidence or rely on faulty statements of probative value—whether forensic or not. The prosecutor's duty is to seek justice, not win convictions." While internal discussions about reform are clearly ongoing, the prosecutorial community's stance seems to be, basically: "trust us."

Judge Edwards, who helped write the 2009 NAS report and watched Silbey deliver her rebuke, took stock at the Harvard meeting. "Part of our worst fears have been realized...[the] DOJ is now the self-anointed



Loretta Lynch, attorney general under President Obama, rejected forensics reform.

array of evidence from the three bombings in Grand Junction.



leader of the forensic science reform. Which is a disaster.”

8 THE FUTURE OF FORENSICS

When Genrich learned that his case was going to be taken up by the Innocence Project, he was thrilled. Unlike most of the cases the nonprofit takes on, there is no DNA evidence that could exonerate him (there rarely is in bombing cases). Instead, his new team of lawyers is arguing that the scientific consensus around toolmark evidence has changed. Leading scientists at the NAS and PCAST say toolmark matching has not yet proved to be a scientifically reliable method, and they agree that the kind of testimony O’Neil gave is scientifically indefensible. The Innocence Project argues that this constitutes “newly discovered evidence” and that Genrich deserves a new trial. Thirty-six prominent scientists, legal scholars, and forensics experts have signed an amicus brief in support.

“The legal concept of newly discovered evidence including a change in science,” says Chris Fabricant of the Innocence Project, who is litigating Genrich’s case, “is in my view a no-brainer. It was presented to a jury as infallible, and today we know it’s not. There is an obligation—an ethical, a legal, and a moral obligation—to go back and correct the record where exaggerated claims may have led to a miscarriage of justice.” When Bert Nieslanik called up the statistician on a hunch that the science was flawed, she was a voice in the wilderness. There was no scientific consensus to support her. Fabricant says that “in a way, she was ahead of her time.”

Genrich’s appeal is among the first of a new flurry of post-conviction challenges based on the lack of research to support the pattern-matching forensic disciplines. The Innocence Project has filed appeals challenging bite marks and shaken-baby syndrome and, just last December, filed an amicus brief in a Maryland firearm case. Yet only two states—California and Texas—have passed statutes stating that a change in scientific consensus alone can constitute “newly discovered evidence.” These special statutes were advanced because higher courts have proved skittish about granting new trials when the scientific evidence used to convict has since become controversial or even discredited. In one case, the California Supreme Court failed to grant the defendant a new trial even when the bite-mark examiner recanted his testimony over 10 years later. That maddening ruling spurred the new California law, and only after its passage did the court finally exonerate the wrongfully convicted man. In states without special statutes, such as Colorado, appeals face a much tougher uphill battle to create new precedent that could be used to keep scientifically flawed expert testimony out



“That’s why scientific evidence is so dangerous when it’s not a real science—because it is persuasive.”

—Lawyer Bert Nieslanik

Meehan Crist is writer in residence in biological sciences at Columbia University. Tim Requarth is a freelance science journalist.

of courtrooms in the future.

The rulings on cases such as Genrich’s will arrive at a critical moment for American criminal justice, which is on the cusp of an explosion of next-generation forensic techniques. Like so many other aspects of modern life, criminal justice is becoming automated. Artificial intelligence predicts criminal “hotspots” so police can be there at the ready. Software sold at \$60,000 a pop to police departments helps them analyze minute amounts of DNA in complex mixtures from multiple people. The new field of digital forensics promises new techniques to parse large amounts of data. These technologies, by and large, are sold by for-profit companies, which means their algorithms are proprietary trade secrets. Their inner workings are invisible to lawyers mounting a defense. Juries will hardly be equipped to decide for themselves what weight to give

a piece of sophisticated, impenetrable science presented as forensic evidence. Says Murphy, the NYU law professor, “Some of the bad habits of the first generation—the secrecy, the government bias, the overclaiming, the stretching without offering empirical support, the failure of judges to curb that behavior—that is going to be on steroids.”

Recently, a few intrepid judges have acknowledged that the problems with forensic science can’t be ignored any longer. In 2016, Judge Catherine Easterly, on the DC Court of Appeals, wrote in a robbery case involving a firearm, “As matters currently stand, a certainty statement regarding toolmark pattern matching has the same probative value as the vision of a psychic: it reflects nothing more than the individual’s foundationless faith in what he believes to be true.” Murphy, who signed on to the amicus brief supporting Genrich’s appeal, says favorable rulings like Judge Easterly’s could help change the legal landscape. “The more a court of high regard makes a ruling that says this is not a legitimate science, or this practice that stands in courtrooms across America...won’t stand in our state, people notice,” she says. “Lawyers making those arguments can say, ‘Look it’s not just me with my tinfoil hat, the Supreme Court of Colorado agrees.’”

When Nieslanik, who is now retired, heard about the NAS and PCAST reports, her response was, “What took them so long?” Genrich has now been in prison for nearly a quarter century, and there is still a deeply troubling disconnect between what constitutes scientific proof and what is accepted as legal evidence. “We weren’t proving Jimmy’s innocence,” Nieslanik says. “We were really focused on ‘this isn’t a science.’ I can tell you from doing triple-digit jury trials, the jurors really want concrete evidence. Because it’s a very hard decision to make. And that’s why scientific evidence is so dangerous when it’s not a real science, because it is persuasive.” ■

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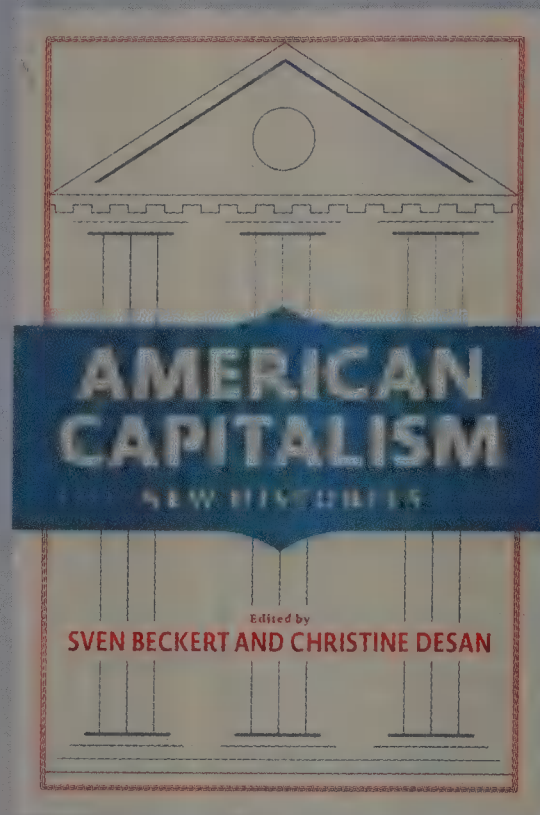
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In 1960, when the American journalist William L. Shirer published *The Rise and Fall of the Third Reich*, the first major survey of the history of Nazi Germany, he did not anticipate that it would become the most widely read book on the subject, nor that it would become so for many years afterward. The hardcover edition sold 1 million copies within a year of

its appearance, the paperback edition another million, and serialization in *Reader's Digest* brought it a further 12 million readers.

There were good reasons for the book's stunning success. Shirer was a brilliant writer, his prose honed by years of experience as a newspaper and radio journalist. He had lived in Germany as a foreign correspondent for many of the years covered in the book and could bring that personal experience to bear on his historical account. He trawled diligently through the Nazi documents

The Third Reich

A History of Nazi Germany

By Thomas Childers

Simon & Schuster. 672 pp. \$35

seized for use by the prosecution in the Nuremberg war-crimes tribunals, as well as the testimony and evidence presented at the trials themselves, and he worked his way through such contemporary documents as were available at the time, including fragments of the diaries of Nazi propaganda minister Joseph Goebbels and Hitler's "table talk."

Richard J. Evans is provost of Gresham College in the City of London and author of The Third Reich in History and Memory.

Yet despite the book's success, it was already deeply flawed at the time of its publication. Shirer did not account for the historical scholarship on the Nazis that was beginning to appear in German in the late 1950s. He left a good deal out of his coverage and focused overwhelmingly on the Nazis' foreign policy and the Second World War. His account was also Hitler-centric and ignored the wider factors—political, economic, and cultural—that played a crucial part in the rise and fall of Nazi Germany. Most of all, his own experience attending party rallies in Nuremberg, along with his ingestion of Anglo-American wartime propaganda, had convinced him that Hitler and the Nazis were enormously popular with the great majority of Germans, and that such popularity demonstrated that Nazism had deep roots in German history. "Blind obedience to temporal rulers," Shirer asserted, had been instilled in Germans since the time of Martin Luther. Such a crude view of German history ignored the currents of opposition represented, for example, by the Social Democrats, Germany's largest political party before the rise of the Nazis, and it was not widely shared by historians even at the time when Shirer wrote.



Dislodging *The Rise and Fall of the Third Reich* from its place at the top of the best-seller list of popular histories of Nazism, however, has proved extremely difficult. There have been plenty of brief histories, and large-scale, one-volume surveys of the topic have also appeared from time to time, the best of them being Karl Dietrich Bracher's *The German Dictatorship*, which was published in 1970, roughly a decade after Shirer's work. But so far, nobody has come close to matching Shirer in sheer readability. Moreover, the astounding mass of new source material released since 1960, the enormous quantity of books and articles on Nazi Germany—thousands upon thousands of them—and the broadening-out of the scope of historical scholarship to include local studies, cultural monographs, economic and social-structural analyses, biographies, and much more besides has made the task of cramming it all between the covers of a single book almost impossible to fulfill. I tried it myself a decade or

so ago, intending initially to write it all down in one volume; I ended up with three instead, totaling some 2,500 pages.

With *The Third Reich: A History of Nazi Germany*, Thomas Childers becomes the latest historian to attempt to dethrone Shirer and present a one-volume survey of this complicated subject. A senior academic at the University of Pennsylvania, Childers has many of the qualities needed for the job. He stays on top of the latest research, without neglecting the older work. He reads German, understands German history, and has been working in the field for over three decades. Most important of all, he is a master of English prose, writing with clarity, elegance, and wit; his account of Nazi Germany is every bit as readable as Shirer's and deserves a wide audience, including high-school and college students. Childers has aimed squarely here at the general reader, and he hits his target with unerring accuracy.

Inevitably, there are points of intersection between Childers's narrative and Shirer's, and perhaps the most pronounced is the absolute centrality of Hitler to their stories. *The Third Reich* begins with Hitler's birth on April 20, 1889, and follows him, to the exclusion of everyone else, through his early life as a struggling would-be artist in Linz, Vienna, and Munich; as an enthusiastic volunteer in the German Army during World War I; and as a novice orator and politician in the immediate postwar months. Only from about page 50 does the narrative broaden out, when we encounter the conditions in postwar Bavaria that allowed Hitler to emerge onto the political scene. Charged with investigating the myriad ultra-right-wing groups that proliferated in the aftermath of an abortive attempt to stage a communist revolution in Munich in early 1919, Hitler found his way into the tiny German Workers' Party, which, as Childers remarks, "had no program, no plans, no advertising, no mimeograph machine, not even a rubber stamp (a vital necessity for any German organization)."

Attracting growing numbers of adherents with his spellbinding oratory, Hitler took over the party, reorganized it, and led it into a disastrous attempt to seize power in

Munich on November 9, 1923, in the notorious beer-hall putsch, which he launched in imitation of Mussolini's successful March on Rome the previous year.

Learning the lesson of his failure—which also earned him a spell in prison—Hitler focused on winning votes for his party, part of a larger strategy of working within the political system in order to undermine it. Childers is absolutely clear that this tactic was combined at all times with intense and pervasive violence on the streets, particularly from the brown-shirted stormtroopers, the strong-arm wing of the movement. Childers's view of the ill-fated liberal democracy of the Weimar Republic is correspondingly gloomy, stressing the continuity of political murders (376 from 1918 to 1922 alone), the economic disasters of hyperinflation and depression, and the radical dynamism and increasingly effective organization of the Nazis, who by the early 1930s were reaching saturation levels in their electoral campaigns, as well as engaging in extreme and brutal assaults on their opponents.

Childers provides illuminating character sketches of the leading players both in the party and in German politics overall, drawing a clear contrast between the youthful activism of men like Goebbels, Heinrich Himmler, and Hitler himself and the tired, colorless figures who led the other political parties. What comes through far more clearly in his narrative than in many other accounts of the Nazi movement is the key role played by Hermann Göring, a World War I flying ace and man of action, who more than once pushed a hesitant Hitler to resolve the various crises into which he was plunged over the years.

Childers's book offers its readers a wealth of detail that captures how the most serious of these crises threatened to overwhelm the Nazi organization toward the end of 1932, as the economy began to recover and the party lost substantial numbers of votes in the November election. But it was also because the party seemed to be weakening that the conservative clique around Reich President Paul von Hindenburg and former chancellor Franz von Papen felt they might be able to co-opt the Nazis, still the largest party in the German Legislature, into their plans to bring an end to Weimar democracy by putting Hitler into the Reich Chancellery as head of a new government on January 30, 1932, and then keeping him in check by

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George Black is a British-born journalist whose career has also included senior positions with international human-rights organizations. He has written extensively on Vietnam (most recently *The New Yorker's* "The Vietnam War Is Still Killing People" and *The Nation's* "The Lethal Legacy of the Vietnam War") and traveled throughout Asia over several decades.



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surrounding him with their own nominees.

Childers convincingly depicts the rapid series of moves through which Hitler outmaneuvered them, using a ruthless combination of legislative decrees and street violence to create a one-party state by the summer of 1933. Over 100,000 socialists and communists were thrown into improvised concentration camps and subjected to horrifying brutality before being released as a warning to anyone else who dared to oppose the Hitler government. Childers is indeed particularly good on the violent nature of the Nazi seizure of power between January and July 1933. He comprehensively demolishes the once-fashionable view that Hitler achieved supreme power by the general consent of the German people and with only a minimal use of force, exercised mainly against despised minorities and marginal groups. Hitler's rise during this period was based on terror in its rawest, most radical form.

As a leading specialist on the politics of the Weimar Republic, however—and particularly on the history of its elections—Childers devotes an inordinate amount of space to these events. In a book of 672 pages titled *The Third Reich*, we don't get to the Third Reich itself until page 226. This isn't actually a history of the Third Reich, then, or even of Nazi Germany; it's a history of Hitler and the Nazi movement, and it's hard not to think that its coverage is seriously unbalanced, with far too much on the origins, early history, and electoral triumphs of the party, and not enough on its exercise of power once the dictatorship was established.

This doesn't stop Childers from devoting some excellent pages to an account of the social and cultural policies of the Third Reich in its early years. He judiciously balances the achievements of the Nazi propaganda and welfare apparatuses in winning over large segments of the population with repeated reminders that this was, in the last analysis, a regime that deprived people of their basic freedoms and ruled by fear. Childers rightly points out that, while the camps had more or less been emptied of inmates by the mid-1930s, the state prisons were overflowing with political prisoners, put there by a raft of draconian new treason laws that made any kind of opposition to the regime subject to the severest of punishments. "Here was a nation," he quotes the novelist Thomas Wolfe observing when he visited Germany in the mid-1930s, "infested with the contagion of

an ever-present fear."

There are also some excellent passages on Nazi cultural policy, though Childers tends to overstress its effectiveness. He describes in graphic detail the infamous "degenerate art" exhibition held in 1937, but he underestimates the extent to which the exhibition's popularity was a mirage created by bussing in large numbers of die-hard Nazis from the countryside. He also examines the Strength Through Joy organization, with its cultural events for workers and its tourist trips to Italy and elsewhere, but he doesn't seem to realize that the more attractive holidays were notorious for being monopolized by party officials.

Childers is very good on the regime's policies toward women and young people, which undermined its much-vaunted promise to restore the integrity of the German family after the supposed immorality and disintegration of the Weimar years. He quotes a widely repeated joke in which one girl explains to a friend: "My father is in the SA, my oldest brother in the SS, my little brother in the Hitler Youth, my mother is part of the NS [National Socialist] women's organization, and I'm in the League of German Girls." "Do you ever get to see each other?" asks the girl's friend. "Oh yes," she replies, "we meet every year at the party rally in Nuremberg!"

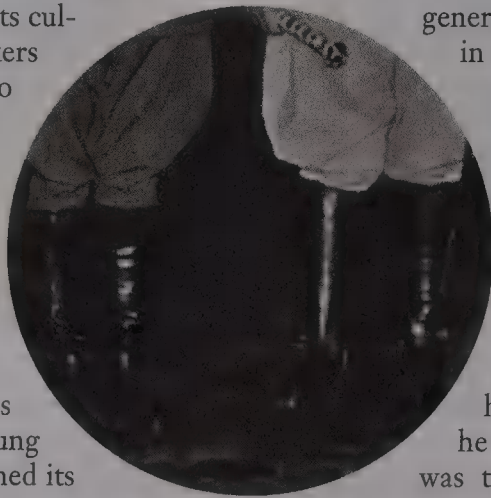
Like Shirer, Childers sees Nazi Germany as a totalitarian society, at least in the sense that the regime aimed to subordinate everyone totally to its will. Goebbels boasted that Hitler and his government had made "a total revolution" that "encompasses every aspect of public life from the bottom up" and erases "any realms in which the individual belongs to himself." Yet it is on this subject that Childers arguably underestimates the degree to which people did manage to preserve some privacy and autonomy for themselves. More generally, he says far too little about German resistance and dissent, which has become the subject of a great deal of research over the past few decades, or about the limits of Hitler's power.

Even so, Childers avoids falling into the same trap as Shirer: He doesn't argue that the Nazi dictatorship and its policies were

welcomed by the great mass of Germans. For example, the anti-Semitic violence in which the regime engaged from the start, in an attempt to drive Germany's tiny Jewish population into emigration, was far from universally embraced. The economic recovery was much more popular, though Childers doesn't really say how it was achieved, and he seriously underestimates the extent to which rearmament provided its motor—indeed, the economy in general gets rather short shrift in the book.

Childers also offers an excellent account of Hitler's radicalization of the regime as he sacked his more moderate generals and ministers in 1937–38 and replaced them with men more willing to do his bidding. Here again, he makes it clear that war was the last thing the great mass of ordinary Germans wanted, despite all the regime's efforts to prepare them for it. He also pays due attention, as Shirer did not, to the morale of ordinary Germans during the war. Hitler's popularity reached its height after the defeat of France in 1940, before plummeting into the depths with the reversals on the Eastern front from Stalingrad onward, the devastating aerial bombings of German cities, and the Allied landings in Normandy in 1944.

This book, therefore, offers a series of important correctives to Shirer's narrative, based on a comprehensive knowledge of the research carried out in the half-century and more since *The Rise and Fall of the Third Reich* was first published. Yet, in the end, it doesn't provide a satisfactory substitute. Perhaps this is the fate of any book that tries to compress such a momentous period into one volume: Its coverage will inevitably be uneven—in this case, with too much on the Nazis' rise to power and Hitler's early life and career, at the expense of more general historical developments and features of the Third Reich itself. Childers has provided his readers with a smooth, readable, and reliable narrative that deserves to be widely read. But it should not be the only book that people read on this topic, as Shirer's *Rise and Fall* too often is. And we are still waiting for a one-volume account that pays equal attention to Nazi Germany and the Hitler dictatorship in all their aspects.





THE LARGE POLICY

How the Spanish-American War laid the groundwork for American empire

by **BRENDA WINEAPPLE**

“I have been through one war,” President William McKinley told a friend. “I have seen the dead piled up, and I do not want to see another.” Reluctant though he may have been to intervene in Cuban affairs, in the spring of 1898, barely a year into McKinley’s presidency, the United States did go to war with Spain, and American ships not only prowled the Caribbean but steamed into the Philippines’ Manila Bay, where Adm. George Dewey smashed the Spanish fleet. McKinley may have been unenthusiastic, but his young assistant secretary of the Navy, Theodore Roosevelt, was delighted. He’d

The True Flag

Theodore Roosevelt, Mark Twain, and the Birth of American Empire
By Stephen Kinzer
Henry Holt. 306 pp. \$28

been hoping for a war: “I think this country needs one,” he said. War builds character, Roosevelt thought, so he quickly finagled a military commission and raised a cavalry unit, famously called the “Rough Riders.” “Holy Godfrey, what fun!” Roosevelt exclaimed during the Battle of San Juan Hill.

Although the story of the Spanish-American War has often been told, it just as often bears retelling, particularly when briskly chronicled by Stephen Kinzer, a former *New York Times* bureau chief in Nicaragua, Germany, and Turkey, and the author of books such as *The Brothers: John Foster Dulles,*

Allen Dulles, and Their Secret World War and *All the Shah’s Men: An American Coup and the Roots of Middle East Terror*. In his latest book, *The True Flag: Theodore Roosevelt, Mark Twain, and the Birth of American Empire*, Kinzer recounts the foreign-policy debate that took place at the dawn of the 20th century. But this was no ordinary debate; it was about American military intervention in countries on their behalf or, more to the point, at their expense. Capturing an ambivalent approach to foreign policy that has persisted into our own day, Kinzer observes that the United States is a country of both imperialists and isolationists. “We want to guide the world,” Kinzer writes, “but we also believe every nation should guide itself.”

In the 1890s, however, the imperialists mostly ran the show. Chief among them was Henry Cabot Lodge, who served as a US senator from Massachusetts for 32 years, beginning in 1892. As the manufacturer Edward Atkinson describes it, Lodge was “the Mephistopheles” who whispered in Roosevelt’s ear (not that the Hero of San Juan Hill wasn’t capable of a jolly belligerence on his own). A Harvard graduate proudly descended from Bay Colony settlers, Lodge was a remote and prickly man who believed himself to be concerned solely with the good of the nation. And that, of course, included its moneyed interests—but not just them, or so Lodge rationalized. For when he first spoke of supporting the insurgents in Cuba and defended the need for a war against Spain, he insisted that his intention was broadly humanitarian. “We represent the spirit of liberty and the spirit of the new time,” Lodge declared, “and Spain is over against us because she is medieval, cruel, dying.” America was new and vital, Spain old and moribund: Lodge couched his war cry in an appeal to youth—and to the nation’s golden future, even if it would be created by force.

Answering Lodge’s call was a long list of power brokers who would serve the country and themselves, in the Senate and in the pages of the nation’s leading magazines and newspapers, where they argued with exuberance that the Atlantic and Pacific oceans would no longer insulate the United States, but rather would serve to carry a proud and powerful navy in search of raw materials, new markets, and far-flung military bases. Capt. Alfred Thayer Mahan’s *The Influence of Sea Power Upon History, 1660–1783*, a book that would inspire Kaiser Wilhelm II, also helped to shape Lodge’s vision. “No nation, certainly no great nation, should henceforth maintain

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the policy of isolation," Mahan had advised. "I am frankly an imperialist." Unlike Lodge, Mahan didn't mince words.

Neither did the consummate yellow journalist William Randolph Hearst, who launched his own bellicose campaign against Spain in the pages of the *New York Journal*, which falsely alleged that the sinking of the USS *Maine*, anchored off the Cuban coast, had been the work of Spanish agents, even though the deadly explosion had likely been caused by an accident on the ship. Evidence didn't deter Hearst, who continued to whip up his readers with fake news and to inflame Congress, which soon passed a resolution declaring that the United States would go to war with Spain if it didn't get out of Cuba. Senator Henry Teller of Colorado insisted that a rider be attached to the resolution disclaiming any intention to annex Cuba. Lodge was unhappy with his colleague's proposal but decided to let it go.

The subsequent "splendid little war" (as the incoming secretary of state, John Hay, called it) ended in just a few weeks, with disease killing more men than combat did. Lodge then vehemently pushed the Senate to ratify a peace treaty with Spain that would net the United States the islands of Puerto

Rico, Guam, and, for a small price (\$20 million), the Philippines—even though, in a matter of weeks, Filipino nationalists were rebelling against US troops in a horrific guerrilla war that would last over three years. "The Philippines mean a vast future trade and wealth and power," Lodge said. But the issue wasn't just the Philippines; empire beckoned. Lodge pushed successfully for the annexation of Hawaii as well. With his euphemistic phrase the "large policy," he intended for the United States to gobble up as much of the world as possible.

The issue at hand for many US policy-makers was partly one of markets, as Lodge publicly acknowledged. Sanford Dole of Hawaii, for instance, had wanted to bring Hawaiian sugar to the United States. But there were other factors feeding the hunger for colonies. A number of US congressmen assumed, along with Christian missionaries, that their "little brown brothers" needed civilizing. Theodore Roosevelt was among them, declaring that "all men of sane and wholesome thought must dismiss with impatient contempt the plea that these continents should be reserved for the use of scattered savage tribes whose

life was but a few degrees less meaningless, squalid, and ferocious than that of the wild beasts with whom they held joint ownership." Kelly Miller, a prominent black intellectual and anti-imperialist, summarized the policy bluntly: "It is a revival of racial arrogance."

The 1890s also saw the country struggling to come to terms with a horrible economic depression (the Panic of 1893), a burgeoning labor force, the Homestead and Pullman strikes, the farmers' movement, and a tide of freshly arrived immigrants. (Lodge supported an attempt to restrict immigration in order to avert "the lowering of a great race.") And Americans had also gotten wind of some other bad news: According to the historian Frederick Jackson Turner, who spoke at the newly convened American Historical Association in 1893, the frontier was now closed. But Turner had adapted the 1890 census data for his own ideological purposes; the actual data didn't show any such thing as a "vanishing frontier." Even so—and no matter how loudly Roosevelt thumped his barrel chest—many Americans believed open lands were a thing of the past, and sought to explore (and exploit) land beyond the continent.

Kinzer doesn't supply this larger backdrop to US imperialism. His focus is narrower, and

You've Been on Earth So Long Already

All my life all I've wanted was to be myself
and someone else. Not theirs but them.

My shame about this greed made
me hesitant with other children.

I wanted what they wanted, but apart:

I tried to make it, spooned what I could
in shallow mental dishes I stacked
all night and poured through

my neediest hole, which opens only
for medicine or extreme misunderstanding.

My teeth browned from too much
thirst too late.

My eyes bulged from noticing
what I wasn't meant to be.

There was a playground that I went to
—and can't take you.

The first thing I did daily
was look for a place to hide, or flee.
There were plenty of gates and wide enough trees.

But I stayed off-center, just beyond
the sprinkler's way.

The other children played until they snacked
around me. Sometimes they cried.
Sometimes they looked consoled by what they couldn't have.

No not now
The boundary of things. The boundary of time.
I wish this for you—come soon—to be withheld.

They were so freely asking for more world.

ELIZABETH METZGER

the story he tells is more harrowing for that reason, particularly when he turns his attention to the war in the Philippines. According to the insurgent Filipino leader Emilio Aguinaldo, Dewey promised the country independence in return for help defeating the Spanish; Dewey later denied making any such agreement. In early 1899, Congress debated the Treaty of Paris between the United States and Spain, whose terms authorized the indefinite American occupation of the Philippine Islands. An appalled Senator George Frisbie Hoar, also of Massachusetts, asked if the United States had the right to “impose on an unwilling people your Declaration of Independence and your Constitution and your notions of freedom and notions of what is good!” Were human beings “to be won as spoils of war or prizes in battle”? Roosevelt considered Hoar’s position treasonous, and Lodge dismissed Thomas Jefferson as “supple, feminine, and illogical to the last degree.”

Roosevelt’s and Lodge’s arguments had thus not swayed all Americans. Arrayed against such vocal imperialists were the members of the American Anti-Imperialist League, founded in 1898, with former treasury secretary and abolitionist George Boutwell as its president. Meeting at Faneuil Hall (the “cradle of liberty”) in Boston, and sounding like the old-time reformers and abolitionists of the antebellum period, the anti-imperialists denounced the spirit of conquest that seemed to betray the American ideal of self-determination. “Let us once govern any considerable body of men without their consent,” Moorfield Storey declared, “and it is but a question of time how soon this Republic shares the fate of Rome!” Early in his career, Storey had been the private secretary of the abolitionist senator Charles Sumner. Joining the movement were Grover Cleveland, Samuel Gompers, and Andrew Carnegie, who immediately wrote a \$10,000 check. “We are in full sympathy with the heroic struggles for liberty of the people in the Spanish Islands, and therefore we protest against depriving them of their rights by an exchange of masters,” the league declared.

To Roosevelt, the anti-imperialists were lacking in “the essential manliness of the American character.” But the Treaty of Paris would also mobilize a group of intellectuals who had supported the war, including Carnegie and Mark Twain, to oppose it. “Apparently we are not proposing to set the Filipinos free and give their islands to them, and apparently we are not proposing to hang the priests and confiscate their property,” Twain noted, joking only by half.

The Treaty of Paris passed, albeit just

barely, and in a speech delivered in enemy territory (Boston), McKinley offered a few bromides about US foreign policy being humanitarian in nature and good for the “misguided Filipino”: “Did we need their consent to perform a great act for humanity?” he asked. In disgust, William James denounced McKinley’s policies as nothing more than “bald brutal piracy, impossible to dish up any longer in the cold potgrease of President McKinley’s cant.”

But with this speech, Kinzer points out, McKinley aired the principles that would guide US foreign policy henceforward, declaring that “the United States never goes abroad in search of selfish advantage; it seeks only to help less fortunate peoples, even if they cannot understand that they are being helped; and it always acts in accordance with noble ideals.” It was empire cloaked in the language of liberty. As one English journalist, writing at the turn of the century, noted, “That is what the unctuous rectitude of the Anglo-Saxon always ends in. He always begins by calling Heaven to witness his unselfish desire to help his neighbor, but he always ends by stealing his spoons!”

In 1899, Senator Albert Beveridge of Indiana, an ardent imperialist, toured the Philippines and reported back to the Senate that “this is the divine mission of America,” without which “the world would relapse into barbarism and night.” Meanwhile, more and more US soldiers were being sent to the Philippines—70,000 by early 1900. Newspapers “screamed” (Kinzer is fond of the word) stories about the atrocities perpetrated by these troops, including the torture and killing of civilians. This did little to change US policy. “Resistance must be stamped out!” Roosevelt insisted. “The first and all-important work to be done is to establish the supremacy of our flag.” The Anti-Imperialist League distributed 125,000 copies of an essay by Twain that read, as if in direct reply: “And as for a flag for the Philippine Province, it is easily managed. We can have a special one...just our usual flag, with the white stripes painted black and the stars replaced by the skull and cross-bones.”

McKinley took his reelection in 1900 to mean that the people of Cuba, Puerto Rico, Guam, and the Philippines had no rights as secured by the US Constitution: no right to due process, free speech, a free press; no right to choose their own leaders; no protections against cruel and unusual punishment. The anti-imperialists took their objections to court, but the Supreme Court decided against them in the so-called “Insular Cases.” (“Insu-

lar” referred to the islands under consideration.) In the first of these, *Downes v. Bidwell*, the Court declared that “there may be territories subject to the jurisdiction of the United States which are not of the United States.” That is, the inhabitants of those islands were “alien races” without the rights of citizenship. The popular humorist Finley Peter Dunne created a character, Mr. Dooley, to mock the imperialists’ hyperbole. On the Supreme Court decision, Mr. Dooley was direct: “Th’ supreme coort follows th’ election returns.”

Aguinaldo was captured in 1901, and fearing the further destruction of his country, he publicly called for an end to the fighting. His surrender depressed the anti-imperialists, who realized they had failed—despite the bipartisan support of such odd bedfellows as Andrew Carnegie and Jane Addams, and despite an effective use of publicity, with their poems and broadsides frequently appearing in newspapers and pamphlets. They had celebrities and literati among their ranks: not just Twain but William Dean Howells, Ambrose Bierce, Booker T. Washington, and John Sherman (a former secretary of state and Gen. William Tecumseh Sherman’s brother). But the word “anti-imperialist,” as William James noted, suggested to the ordinary citizen “a thin-haired being just waked up from the day before yesterday, brandishing the Declaration of Independence excitedly, and shrieking after a railroad train thundering towards its destination to turn upon its tracks and come back.”

The anti-imperialists, as Kinzer notes, were also divided internally. The Southern contingent—Democrats like the white supremacist Ben Tillman—opposed annexation because they wanted to keep the United States from injecting, as Tillman put it, “viti-ated blood” into the body politic. Of course, this white-supremacist point of view wasn’t confined to the South, and although Kinzer celebrates the anti-imperialist proclamations of Gen. Carl Schurz, the Prussian-born former senator from Missouri, Schurz’s position in many ways resembled Tillman’s. In his 1899 speech “American Imperialism”—which Kinzer doesn’t quote—Schurz vigorously insisted that the peoples of the Caribbean, “under the influences of their tropical climate...will prove incapable of becoming assimilated to the Anglo-Saxon. They would, therefore, remain in the population of this republic a hopelessly heterogeneous element—in some respects more hopeless even than the colored people now living among us.”

Then there was the equivocal position of the spellbinder Democrat William Jennings Bryan, ostensibly an important anti-imperialist, but who switched sides and

helped persuade the Senate to ratify the Treaty of Paris. When Bryan ran against McKinley in 1900, he emphasized his economic policy, the “free silver” platform; leading anti-imperialists then split on whether to back him, for they considered the platform a “proven loser”—which it turned out to be. Thomas Reed, the anti-imperialist speaker of the House of Representatives, glumly observed that Bryan would “rather be wrong than president.” The disagreement over Bryan, Kinzer writes, marked “the beginning of the end for the American Anti-Imperialist League.” It didn’t help that most of its leaders were over 60, whereas the expansionists came to represent the vigor of a virile manifest destiny—especially in the person of Roosevelt, now headed for the vice presidency, who proclaimed that “our nation, glorious in youth and strength, looks into the future with eager eyes.”

The war in the Philippines, however, was far from over. Even after McKinley’s assassination, US soldiers continued to ravage the country, killing Filipinos, burning their villages, and laying waste to crops; after three years of such “counterinsurgency,” Kinzer writes, “Americans lost whatever national innocence had survived slavery, anti-Indian campaigns, and the Mexican War.” Twain and the anti-imperialists had never seen any innocence to speak of: “Lust of conquest had long ago done its work.... There was no principle but commercialism, no patriotism but of the pocket,” Twain wrote.

At the end of 41 months, hundreds of thousands of Filipino civilians had died, and at least 20,000 insurgents—far more than had perished in the 350 years of Spanish rule. But, Kinzer argues, no lessons had been learned: US foreign policy in the 20th and 21st centuries may spring from an ambivalence to intervene in the world, but it continues to represent itself as benevolent when it does so for its own economic self-interest. Surveying the interventions overseen by every president from William Howard Taft to Barack Obama, Kinzer ends his book with a bird’s-eye view of the continuing debate between the anti-imperialists and the proponents of American intervention, making a fierce plea for the United States to understand its past and its role in the world and strip itself of unctuous rectitude. “Nations lose their virtue when they repeatedly attack other nations,” Kinzer concludes. It seems a simple formulation—too simple, perhaps, and then again not well-heeded, or even refuted, when the attacking rich nation, wrapped in a mantle of self-righteousness, is stealing all the spoons. ■



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CupcakKe’s *Ephorize*

by BIJAN STEPHEN

“**W**hat you gon’ do in the next two minutes?” Elizabeth Harris, the unsigned 20-year-old rapper better known as CupcakKe, asks, thrillingly, at the end of “2 Minutes,” the first song on her latest album, *Ephorize*. It’s Harris’s third studio album and by far her best; what’s clearest here is her growth as a musician—from a teenage rapper whose viral hit, “Deepthroat,” is about exactly what you might think (and twice as explicit), to an artist who’s capable of moving introspection (“Self Interview”) and savagely inventive lines (see “Cartoons,” among many possible

examples). It goes without saying that Harris can still pull off a song like “Duck Duck Goose,” which is about playing the children’s game, but with dicks.

Harris grew up in Chicago’s Parkway Gardens—the same neighborhood that her drill-music peer Chief Keef hails from—and had a rough childhood, spending time in the city’s homeless shelters for nearly four years, starting when she was just 7 years old. Some of this shows up in her earlier music: Cuts from her 2016 album *Cum Cake*—including “Pedophile,” about a relationship between an underage woman and a man “about 10” years older, and “Reality, Pt. 2” (“I say people barely eating so I thank God for this bite / No light, food or gas but yeah I thank God for them nights”)—allude to much darker times.

Bijan Stephen writes on music and culture for The Nation. His work has appeared in The New Yorker, The New Republic, and elsewhere.

On *Ephorize*, the subjects are no less personal but somehow feel more confessional, like the following lines from “Self Interview”: “Nothin’ tacky ’bout my Ac-nique, the inside the most attractin’ / Hair ain’t really that nappy, if I stop comparin’ it to Yaki / Been walked over so much, now when I meet someone, I act rude / They always ask if my tats hurt, but the hurt why I got tattoos.” On “Single While Taken,” Harris tracks the pain of being with someone, and in it, her eye for detail is unmatched:

All you hear is “I” like you ’bout to start darin’
None of this the same like it was in the past
I want you to pay attention, they want you to pay the tab
Convincin’ myself like, “It ain’t that bad”
See a problem and skip over it like a YouTube ad
I confront you with some shit, you say, “It ain’t that deep”
Yeah, it ain’t that deep until a bitch go and cheat
You gotta fix this, you actin’ fishy like fish sticks
You buggin’ like bugs surroundin’ at picnics
Don’t take this to heart but we losin’ our spark
You only come through at night like glow-in-the-dark

“Single While Taken” is the penultimate track, but after listening to the album several times, I wonder if, in fact, it’s the first half of the relationship described in “Exit,” seven tracks earlier:

My best friend said she saw you at the Best Western
If that wasn’t you then why your name was checked in?
I thought maybe by now you would have your shit together
I can stand alone if on the throne we cannot sit together
Yeah you say you love me but you show different ways
Fuck what you say, you made it clearer than an icing on glaze
Nights after the night, the side pillow is alone
When yo’ ass home it still feel like you gone

Who hasn’t felt a version of this? The two songs capture that particular kind of pain that comes with realizing that

something about your relationship is off, has gone suddenly sour—and also realizing that it’s neither your fault nor something you can control. Harris confronts those feelings of anger and frustration, acknowledging why they can be particularly pernicious while understanding just how magnetic the person who betrayed you can still be. As she raps in the second verse of “Exit”: “My mind telling me go but my heart telling me stay / 30 seconds I love you, the other 30 I hate / 2 could play the game but lemme show you my way / 365 contacts, new number every day.” That doesn’t help, of course: “I walk away, I won’t be back, the next day, I’m on your lap,” Harris admits in “Single While Taken.”

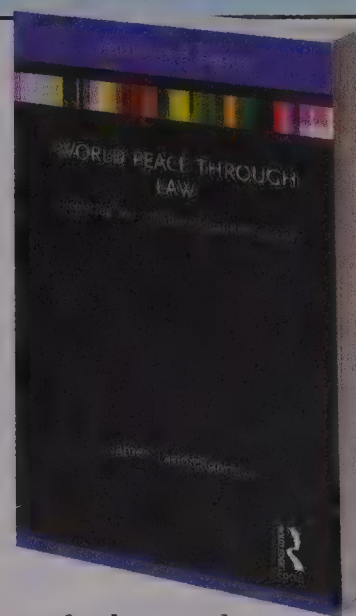
“Cartoons,” the album’s standout track, is both an ode to her childhood and a screed of joking boasts. The chorus goes: “If I see carats like Bugs Bunny / I’m Batman, robbin’ for the money / Strip her, bare feet like The Flintstones / Make a Tom and Jerry whole way home / I’m a snack so I attract Scooby Doos.” And in the midst of all this chaos, there’s joy: Harris is having a great time. (The best lyric of 2018 so far might be when she raps about reading *Goodnight Moon* while in the middle of a sex act.) On “Wisdom Teeth,” Harris trades her boasts for guidance to young men, which turns out to be about as absurdist an advice column as you’d expect: “I eat ramen noodles just to humble myself / I don’t change off wealth / Niggas on the ’Gram finding these expensive-ass belts / That’s a life they couldn’t help.”

Those same themes show up in Harris’s earlier work. On *Queen Elizabitch*, for example, which came out last March, there’s a glimpse of the CupcakKe of *Ephorize*: The album is similarly paced, yo-yoing from the autobiographical and street social commentary of “Scraps” to the straight pop of “33rd” and the XXX banger “Cpr,” which shares nothing with the medical procedure but a name. As *Pitchfork*’s Briana Younger noted at the time, “Women can, at once, be shameless and vulnerable, sexy and brilliant—the former doesn’t cheapen the latter.” The same month *Queen Elizabitch* was released, Harris hopped on a track with English pop star Charli XCX for her mixtape *Number 1 Angel*; titled “Lipgloss,” the effort was both sexy and brilliant, and brought Harris’s name to a huge new audience, with the tape ending up on more than a few critics’ year-end lists. *Ephorize* takes Harris’s fire and shapes it into a more enduring form.

The transition from the soul searching in “Self Interview” to the delighted raunchiness of “Cartoons” and “Duck Duck Goose” can be somewhat jarring. But Harris is a nimble enough rapper to flit between modes and styles, and *Ephorize*’s variegated nature lets her flow over all kinds of production, with predictably exciting results. In nearly every song, you can hear shades of trap, drill, bounce, and reggaeton, with Harris’s voice making the whole thing hang together. I can’t help but wonder, however, what a more concentrated effort would sound like, or what a CupcakKe album will be when Harris is less focused on making a place for herself in mainstream rap. More than anything, *Ephorize* is a showcase of what Harris can do now, as well as a tantalizing glimpse of what she might be able to achieve in the future.

By turns exhilarating and free and daring, *Ephorize* is clearly Harris’s best album yet—the sonic equivalent of seeing a geyser erupt. There’s an undeniable joy to it as well: Harris is at her best when she’s asking for what she wants, whether that’s sex or love or a space in hip-hop, for herself and women like her. ■

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No other TV series captures daily life in New York City quite like HBO's *High Maintenance*

by JUDY BERMAN

The HBO version of *High Maintenance* began with a minor adjustment. In the premiere, we met The Guy, a mellow, nameless New Yorker who bikes around the city delivering weed, as he consulted with his old-school barber. "I'm thinking just a little off the top," he said. "Nothing too drastic."

The exchange served as a subtle message to fans of the original Web series: Yes, *High Maintenance* creators Katja Blichfeld and Ben Sinclair (a husband-and-wife team until they split on election night 2016) had brought their short-form Vimeo sensation to premium cable. But, aside from the expanded, half-hour format, the show would remain essentially the same. Blichfeld and

Sinclair, who also stars as The Guy, kept that promise. The first season offered a familiar collage of cannabis enthusiasts, from a social-media-addicted extrovert to an agoraphobic man who makes art with LaCroix cans, all portrayed with remarkable empathy.

The Guy is back in the barber's chair in the opening scene of season 2, but this time, something drastic does happen. He requests "the usual" but from a new hairdresser, while a dance party rages in a back room and a man digs through a catering tray of spaghetti; what he gets is his signature beard shorn off. This is, of course, a nightmare. Even so, when The Guy and his girlfriend, Beth (Yael Stone), wake up and check their phones, they find that the real world has suddenly become as surreal as the dream. "Oh shit. Something bad happened," says Beth. Then she loads up

her bong.

Welcome to New York in the Trump era, where a DJ spins house music while the things that make the locals who they are keep getting torn from them. No other TV series captures daily life in the city quite like *High Maintenance*, which profiles so many of its residents, and from so many different communities, without judgment. It survived the move to HBO intact, only to be diverted from "the usual" by the chaos that took hold after its first season ended in October of 2016.

The script for the season premiere, "Globo," elegantly avoids identifying the cataclysmic event whose aftermath dominates the episode. There are clues that it is set on the day after the election: Over mussels, a man tells his companion she's lucky to have a British passport. At the bar where Beth works, one blowhard opines that at least comedy is going to be great for the next few years. There are also moments in the first episode when it seems like New Yorkers are responding to a terrorist attack. But it doesn't matter whether Blichfeld and Sinclair, who wrote and directed "Globo," are referencing the election or some fictional catastrophe or both. The confusion only highlights the sheer number of awful surprises we've woken up to since *High Maintenance* last aired. An episode that connects the show's typical intimate character studies with glimpses of depressing birthday parties, silent subway rides, and strangers treating one another delicately becomes a panorama of collective mourning. I was not in New York on 9/11, but I'd been living there for 11 years by November 9, 2016, the day after 81 percent of New York City residents voted against Trump, and it looked and sounded just like "Globo."

That funereal atmosphere is limited to the premiere, which ends on a note of messy, quintessentially *High Maintenance* transcendence when a little boy with a balloon turns a grim subway car into a cathartic party. Still, the season takes place in a resolutely (if inconsistently) radicalized New York, where women practice yoga in T-shirts that say, "All We Ever Did Was Be Black." In one of the funniest vignettes of the season, the unassuming Guy's arrival at an all-female #Resistance gathering causes a rift between guests who feel triggered by a man's presence and those who just want to smoke a bowl.

As that scenario suggests, Blichfeld and Sinclair are wise enough to avoid glorify-

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ing the city's diverse, progressive inhabitants, even in 2018. A glib twist at the end of the fourth episode, "Derech," when a drag performer saves a life, is a rare exception, but mostly we meet opportunistic reporters and rich couples who won't share their sauna with neighbors whose rent is subsidized. With so many scenes set in the apartments of stoners, the show can't help but register the moral complexities of life in a liberal utopia where immigrants, artists, and people of color coexist uneasily with the wealthy newcomers destined to gentrify them out of their homes. In season 1, weed tied together a rebellious Muslim student, her strict uncle, and their polyamorous white neighbors, who were pre-

paring to throw an elaborate and mildly offensive Moroccan-themed dinner party. In this season, we get a black real-estate broker (played by Danielle Brooks from *Orange Is the New Black*) renting apartments to gentrifiers in the working-class neighborhood where she grew up.

High Maintenance has never been a polemical show, but it has always been a political show. In episodes (and webisodes) stretching back to 2012, it has introduced us to cross-dressing dads, Jewish families celebrating Passover, and meatheads who turn out to be Method actors. It's shown us just about every kind of family—and every kind of sex. The subtle

but consistent subtext is that everyone, no matter where they were born, who they love, or how they express that affection, belongs in The Guy's New York.

The Trump regime has done a number on this city, leaving its residents even more anxious, exhausted, and economically stratified than they already were, and the new season acknowledges those burdens without letting them win. Each story line resists New York's least favorite native son by embodying the hometown values he's determined to destroy: multiculturalism, empathy, unapologetic weirdness. Those traits have sustained us since The Guy's last haircut. With any luck, he'll be back at the real barbershop soon. ■

America Will Be

after Langston Hughes

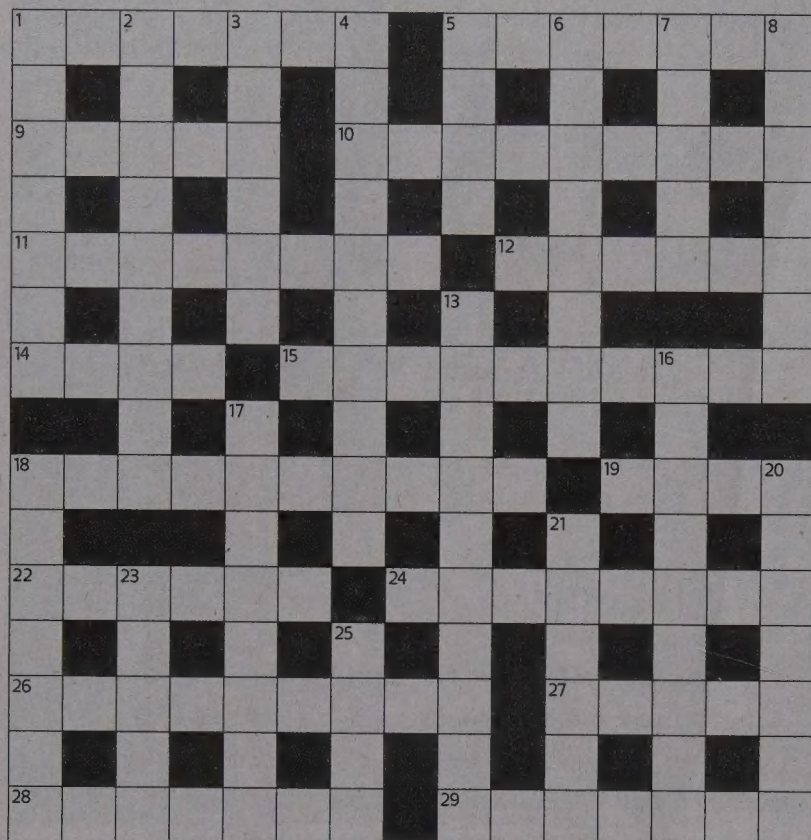
I am now at the age where my father calls me brother when we say goodbye. *Take care of yourself, brother*, he whispers a half beat before we hang up the phone, and it is as if some great bridge has unfolded over the air between us. He is 68 years old. He was born in the throat of Jim Crow Alabama, one of ten children, their bodies side by side in the kitchen each morning like a pair of hands exalting. Over breakfast, I ask him to tell me the hardest thing about going to school back then, expecting some history I have already memorized. Boycotts & attack dogs, fire hoses, Bull Connor in his personal tank, candy paint shining white as a slaver's ghost. He says: *Having to read the Canterbury Tales*. He says: *eating lunch alone*. Now, I hear the word America & think first of my father's loneliness, the hands holding the pens that stabbed him as he walked through the hallway, unclenched palms settling onto a wooden desk, taking notes, trying to pretend the shame didn't feel like an inheritance. You say *democracy* & I see the men holding documents that sent him off to war a year later, Motown blaring from a country boy's bunker as napalm scarred the sky into jigsaw patterns, his eyes open wide as the blooming blue heart of the light bulb in a Crown Heights basement where he & my mother will dance for the first time, their bodies swaying like rockets in the impossible dark & yes I know that this is more than likely not what you mean when you sing *liberty* but it is the only kind I know or can readily claim, the times where those hunted by history are underground & somehow daring to love

what they cannot hold or fully fathom when the stranger is not a threat but the promise of a different ending I woke up this morning and there were men on television lauding a wall big enough to box out an entire world, families torn with the stroke of a pen, citizenship little more than some garment that can be stolen or reduced to cinder at a tyrant's whim my father knows this grew up knowing this witnessed firsthand the firebombs the Klan multiple messiahs love soaked & shot through somehow still believes in this grand blood-stained experiment still votes still prays that his children might make a life unlike any he has ever seen. He looks at me like the promise of another cosmos and I never know what to tell him. All of the books in my head have made me cynical and distant, but there's a choir in him that calls me forward my disbelief built as it is from the bricks of his belief not in any America you might see on network news or hear heralded before a football game but in the quiet power of Sam Cooke singing that he was born by a river that remains unnamed that he runs alongside to this day, some vast and future country, some nation within a nation, black as candor, loud as the sound of my father's unfettered laughter over cheese eggs & coffee his eyes shut tight as armories his fists unclenched as if he were invincible

JOSHUA BENNETT

Puzzle No. 3455

JOSHUA KOSMAN AND HENRI PICCIOTTO



ACROSS

- 1 Bishop likely is married in sacred ritual (7)
- 5 Psychologist gives name to crappy performing ensemble (3,4)
- 9 Thrust bar after losing ring (5)
- 10 Skip wildly to entertain a sun-baked, independent South Asian (9)
- 11 Solo (sole) source for transfer (4,4)
- 12 In Dubuque, Lydia discussed mathematician (6)
- 14 Removing the tip of a feather—that's a desirable job (4)
- 15 Extremely high-velocity way to travel around some water! (10)
- 18 Manic Opus 1, perhaps! (5,5)
- 19 Lavish interior for major renter (4)
- 22 Public display of affection—behold, it goes to the heart (4-2)
- 24 Misshapen crone conceals a way to inherit military equipment (8)
- 26 Once again, drafting leaderless gang to circle round that thing (9)

- 27 Turned onion au gratin ingredients into fertilizer (5)
- 28 *Forbes* magazine's start-up: all-male holding company (5-2)
- 29 Pacino in a stage setting? That's irregular (7)

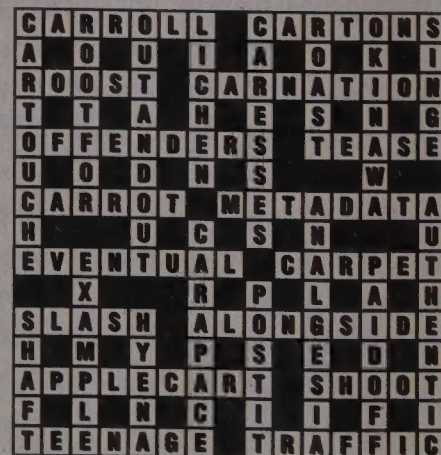
DOWN

- 1 Hotel worker's infernal dance, according to Spooner (7)
- 2 Author viciously slain outside university's piece of land (9)
- 3 Federal agency to fight beer-storage option (6)
- 4 Players and ump mixed up breakfast condiment (5,5)
- 5 Potassium in coffee makes you gag (4)
- 6 Where to fill up Georgia's shoes (3,5)
- 7 Under any circumstances, a high (2,3)
- 8 Led astray about current decrease (7)
- 13 Spoiled brat, receiving tip from investor on fads, buys and sells immediately (10)
- 16 Spot vehicle time after time in the inside track (9)
- 17 Government figure's complicated topic: oil (8)
- 18 Medicine mostly covers mirthless wayfarer (7)
- 20 The first thing to do: overturn empty rule in some residences (4,3)
- 21 Something puzzlers work on: cheating in game (6)
- 23 For example, a promise on a train (5)
- 25 Steadfast enterprise (4)

SOLUTION TO PUZZLE NO. 3454

ACROSS 1 [CAR]ROLL 5 [CAR]TIONS
 9 R(O + O + S[even])T 10 [CAR]NATION
 11 OF FENDERS 12 "teas" 13 [CAR]ROT
 14 MET A D.A. + TA 18 anag.
 20 [CAR]PET 23 S(L)ASH
 25 A LONG SIDE 26 APPLE[CAR]T
 27 2 defs. 29 hidden 29 puzzle theme

DOWN 1 [CAR]TOUCHE 2 "route 4"
 3 OUTAND (anag.) + OUT 4 "liken"
 5 [CAR]ESSES 6 alternate letters
 7 O + KIN + AW + A 8 S + INGE
 15 A(NALGE)SIA (angel anag.)
 16 AU + THEN + TIC 17 [CAR]APACE
 19 EXAM + PLE[a] 21 P + AID + OFF
 22 POS (rev.) + TIT 23 SH + AFT
 24 final letters



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